



Snohomish County

Human Services

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July 13, 2026

Paula Renz
Department of Social and Health Services (DSHS)
4450 10TH AVE SE,
Lacey, WA 98503

Dave Somers
County Executive

RE: DSHS Contract # 2669-71089

Dear Ms. Renz:

Snohomish County is in receipt of **DSHS Contract # 2669-71089**, which includes pass-through dollars from the Department of Health and Human Services (HHS).

As you may be aware, Snohomish County, along with other local government plaintiffs, has successfully challenged grant terms and conditions that HHS and its operating division and agencies have included in grant agreements and other documents.

Pursuant to a Preliminary Injunction in *King County et al. v. Turner et al.*, 2:25-cv-00814-BJR (W.D. Wash.)(issued August 12, 2025)("Order"), in which Snohomish County is a plaintiff, HHS and its operating divisions and agencies, are enjoined from "imposing or enforcing the HHS Grant Conditions...or any materially similar terms or conditions at any stage of the grant-making process, including but not limited to in new grant applications, notices of funding availability or opportunity, certifications, grant agreements or post-award submissions as to any HHS funds awarded directly or indirectly...." See Order at 40. A copy of the Preliminary Injunction is enclosed with this letter for your reference, and a list of the HHS Grant Conditions can be found on pages 48-50.

Snohomish County has carefully reviewed **DSHS Contract # 2669-71089** and has not found the HHS Grant Conditions or materially similar conditions within this agreement. Snohomish County's consent to this agreement is contingent upon the absence of the HHS Grant Condition or any materially similar terms and conditions.

Sincerely,

Mary Jane Brell Vujovic, Director
Snohomish County Human Services

Enclosure: Preliminary Injunction *King County et al. v. Turner et al.*, 2:25-cv-00814-BJR (W.D. Wash.)(issued August 12, 2025)

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NO. 2:25-cv-814

MARTIN LUTHER KING, JR. COUNTY, *et al.*

Plaintiffs,

vs.

SCOTT TURNER in his official capacity as
Secretary of the U.S. Department of Housing
and Urban Development, *et al.*,

Defendants.

**ORDER GRANTING PLAINTIFFS'
THIRD MOTION FOR
PRELIMINARY INJUNCTION**

I. INTRODUCTION

Congress, as the branch of government constitutionally entrusted with the power of the purse, has long made critical investments in programs to end homelessness, strengthen communities, and improve local infrastructure. These budget decisions are not mere technical exercises, they reflect difficult judgments (and compromises) about how best to allocate our nation's resources. Every dollar allocated is a deliberate decision on how to serve the public good. And under the constitution, it is Congress—not the President—that has the authority to

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1 make those judgments. Yet that is precisely what the Plaintiffs in this case allege the current
2 administration has attempted to override. They contend that the Trump Administration
3 unlawfully seeks to impose hotly contested political conditions on funds that Congress has
4 already appropriated—substituting the Executive’s preferences for the will of Congress, in clear
5 defiance of constitutional limits.

6 On June 3, 2025, this Court enjoined Defendants U.S. Department of Housing and Urban
7 Development (“HUD”) and U.S. Department of Transportation (“DOT”) from imposing
8 unlawful funding conditions on an estimated \$4 billion in HUD Continuum of Care Program
9 (“CoC”) and DOT grants that had been awarded to the then Plaintiffs—at the time 31 local
10 governments and agencies—to support vital programs across the country, including
11 homelessness prevention and transportation infrastructure. This Court determined that those
12 Plaintiffs are likely to succeed on the merits of their claims that Defendants’ actions violated the
13 Administrative Procedure Act (“APA”), 5 U.S.C. § 551 *et seq.*, as contrary to the constitution
14 and in excess of statutory authority, and arbitrary and capricious.

15 On July 10, 2025, Plaintiffs filed an amended complaint in which they added
16 approximately 30 additional local governments and agencies as plaintiffs and the U.S.
17 Department of Health and Human Services (“HHS”) as a defendant. Currently before the Court is
18 Plaintiffs’ Third Motion for Preliminary Injunction. Dkt. No. 186. Plaintiffs allege that not only is
19 HUD attempting to impose the same unlawful funding conditions that this Court previously
20 enjoined on CoC grants awarded to some of the newly added Plaintiffs, but it is attempting to
21 impose the funding conditions on all HUD grants, regardless of whether they are CoC grants.
22 Plaintiffs further claim that DOT is also attempting to impose the same previously enjoined

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1 funding conditions on grants awarded to some of the newly added Plaintiffs. Lastly, Plaintiffs
 2 allege that HHS has begun imposing substantially similar unlawful funding conditions on its
 3 grants. Plaintiffs assert that Defendants’ actions threaten more than \$12 billion in funding that is
 4 needed to support essential and life-sustaining programs in their communities and seek a
 5 preliminary injunction extending the relief that this Court previously granted in June 2025 to the
 6 newly added Plaintiffs that have CoC and/or DOT grants, barring HHS from applying the
 7 unlawful funding conditions on its grants, and barring HUD from doing the same as to all of its
 8 grant programs.

9 Having reviewed the briefs and exhibits filed in support of and in opposition to the motion, the
 10 record of the case, and the relevant legal authority, the Court will grant the motion. The reasoning for
 11 the Court’s decision follows.

12 II. PROCEDURAL HISTORY

13 This case started on May 2, 2025 when Martin Luther King, Jr. County (“King County”),
 14 Pierce County, Snohomish County, City and County of San Francisco (“San Francisco”), Santa
 15 Clara County, Boston, Columbus, and New York City (collectively, “the Original Plaintiffs”)
 16 sued HUD, DOT, and the Federal Transit Administration (“FTA”), as well as the agencies’ heads
 17 in their official capacities, challenging the imposition of new funding conditions on grants that the
 18 Original Plaintiffs had been conditionally awarded for fiscal year 2024.¹ Dkt. 1. Seven of the
 19 Original Plaintiffs (excluding Columbus) then moved for a temporary restraining order (“TRO”)
 20 on May 5, 2025. The Court held a hearing and granted their motion two days later. Dkt. Nos. 5,

21
 22 ¹The original Defendants were HUD, DOT, Scott Turner in his official capacity as Secretary of HUD, Sean Duffy in
 his official capacity as Secretary of DOT, FTA, and Matthew Welbes as the acting Director of FTA. Dkt. No. 1 at ¶¶
 16-21.

51–52. At the conclusion of the TRO hearing, the Original Plaintiffs stated their intent to move for a preliminary injunction on the same issues subject to the TRO, which was set to expire fourteen days later. Dkt. No. 53. The Court ordered briefing and on May 21, 2025, held a hearing on the motion for a preliminary injunction. *Id.*; Dkt. No. 73. At the conclusion of that hearing, the Court determined that good cause existed to extend the TRO by another fourteen days, to June 4, 2025, and stated that it would issue a written decision on the motion for preliminary injunction by that date. Dkt. No. 73.

Later that day the Original Plaintiffs filed an amended complaint adding 23 local governments and agencies as Plaintiffs, as well as the Federal Highway Administration (“FHWA”), the Federal Aviation Administration (“FAA”), the Federal Railroad Administration (“FRA”), and the component heads in their official capacities, as Defendants.² Dkt. No. 71. The 23 newly added Plaintiffs brought the same claims and challenged the same funding conditions as the Original Plaintiffs. Dkt. 71. They also sought a TRO and preliminary injunction, which the Court granted. Dkt. Nos. 72, 152. Defendants appealed the preliminary injunction order to the U.S. Court of Appeals for the Ninth Circuit, where the appeal remains pending.³ Dkt. No. 173.

² The 23 newly added Plaintiffs were the City and County of Denver, Colorado (“Denver”), the Metropolitan government of Nashville and Davidson County, Tennessee (“Nashville”), Pima County, Arizona (“Pima County”), County of Sonoma, California (“Sonoma”), City of Bend, Oregon (“Bend”), City of Cambridge, Massachusetts (“Cambridge”), City of Chicago, Illinois (“Chicago”), City of Culver City, California, (“Culver City”), City of Minneapolis, Minnesota (“Minneapolis”), City of Pittsburgh, Pennsylvania (“Pittsburgh”), City of Portland, Oregon (“Portland”), City of San Jose, California (“San Jose”), City of Santa Monica, California (“Santa Monica”), City of Pasadena, California (“Pasadena”), City of Tucson, Arizona (“Tucson”), City of Wilsonville, Oregon (“Wilsonville”), Central Puget Sound Regional Transit Authority located in King, Pierce, and Snohomish Counties, Washington (“CPSRTA”), Intercity Transit located in Thurston County, Washington (“Intercity Transit”), Port of Seattle, Washington (“Port of Seattle”), King County Regional Homelessness Authority located in King County, Washington (“King County RHA”), Santa Monica Housing Authority, California (“Santa Monica HA”), San Francisco County Transportation Authority, located in the City and County of San Francisco, California (“SFCTA”), and Treasure Island Mobility Management Agency located in Treasure Island and Yerba Buena Island, California (“TIMMA”). Dkt. No. 71 at ¶¶ 8-38. The newly added Defendants were FHWA, Gloria M. Shepard as the acting Director of FHWA, FAA, Chris Rocheleau as acting Administrator of FAA, FRA, and Drew Feeley as acting Administrator of FRA. *Id.* at ¶¶ 39-50.

³ In moving for leave to file the second amended complaint, Plaintiffs asserted that the “claims in the [second amended complaint] challenging new grant conditions are indistinguishable on the facts and law [from] the existing

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On July 10, 2025, Plaintiffs filed a second amended complaint adding another 29 local governments and agencies as plaintiffs.⁴ Dkt. No. 184. Plaintiffs continue to challenge the HUD and DOT funding conditions as before, but now have added HUD grants outside the CoC program, and have brought new claims against HHS and its agencies, including the Administration for Children and Families (“ACF”), Health Resources and Services Administration (“HRSA”), National Institutes of Health (“NIH”), Substance Abuse and Mental Health Services Administration (“SAMHSA”), and the Centers for Disease Control and Prevention (“CDC”). As before, Plaintiffs seek a preliminary injunction enjoining the imposition of the new funding conditions on their federal grants.

The new Plaintiffs challenging the imposition of the new funding conditions on HUD CoC grants are Alameda County, Albuquerque, Baltimore, Columbus, Dane County, Hennepin

claims.” Dkt. No. 181 at 4. Defendants did not oppose the motion. While the Ninth Circuit has not ruled directly on the issue of whether a district court retains jurisdiction to allow amendment of pleadings pending appeal of a preliminary injunction, district courts within this circuit have recognized that pending interlocutory appeal they retain jurisdiction over matters that would not change the issues before the appellate court. *See e.g. Center for Food Safety v. Vilsack*, 2011 WL 672802 at *2 (N.D. Cal. 2011). In light of this, the Court concluded that it retained jurisdiction to allow the requested amendment because a significant portion of the second amended complaint simply adds new Plaintiffs challenging Defendants’ imposition of the previously enjoined unlawful funding conditions on CoC HUD and DOT grants. And while the second amended complaint does also challenge Defendants’ imposition of funding conditions on non-COC HUD and HHS grants, the challenged conditions are either identical or substantially similar to the previously imposed conditions, and the claims implicate identical legal issues. In addition, several of the newly added Plaintiffs face a fast-approaching deadline of August 16, 2025 to submit consolidated/action plans to HUD or forfeit the formula grant funding. Dkt. No. 186 at 1; Dkt. No. 184 at ¶ 623. Nevertheless, if it is determined that this Court lacked jurisdiction because an appeal is pending, then this Court issues this order as an indicative ruling pursuant to Fed. Rule of Civ. P. 62.1(3).

⁴ The 29 newly added Plaintiffs are County of Alameda (“Alameda County”), City of Albuquerque (“Albuquerque”), Mayor and City Council of Baltimore (“Baltimore”), City of Bellevue (“Bellevue”), City of Bellingham (“Bellingham”), City of Bremerton (“Bremerton”), County of Dane (“Dane County”), City of Eugene (“Eugene”), City of Healdsburg (“Healdsburg”), County of Hennepin (“Hennepin County”), Kitsap County, City of Los Angeles (“Los Angeles”), City of Milwaukee (“Milwaukee”), Milwaukee County, Multnomah County, City of Oakland (“Oakland”), City of Pacifica (“Pacifica”), City of Petaluma (“Petaluma”), Ramsey County, City of Rochester (“Rochester”), City of Rohnert Park (“Rohnert Park”), City of San Diego (“San Diego”), County of San Mateo (“San Mateo County”), City of Santa Rosa (“Santa Rosa”), City of Watsonville (“Watsonville”), Culver City Housing Authority (“CCHA”), Puget Sound Regional Council (“PSRC”), Sonoma County Transportation Authority (“SCTA”), and Sonoma County Community Development Commission (SCCDC”). Dkt. No. 184 at ¶¶ 136-253.

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County, Milwaukee, Multnomah County, Oakland, Petaluma, Ramsey County, San Mateo County, and Sonoma County (collectively, “the New CoC Plaintiffs”).

The new Plaintiffs challenging the imposition of the new funding conditions on DOT grants are Alameda County, Albuquerque, Baltimore, Bellevue, Bellingham, Bremerton, Cambridge, Dane County, Eugene, Healdsburg, Hennepin County, Kitsap County, Los Angeles, Milwaukee, Milwaukee County, Multnomah County, Oakland, Pacifica, Pasadena, Petaluma, PSRC, Ramsey County, Rochester, Rohnert Park, San Diego, San Mateo County, Santa Rosa, SCTA, and Watsonville (collectively, “the New DOT Plaintiffs”).

The Plaintiffs challenging the new funding conditions on non-CoC HUD grants are King County, Pierce County, Snohomish County, Boston, Columbus, San Francisco, Santa Clara, NYC, Bend Cambridge, Chicago, Culver City, Minneapolis, Nashville, Pasadena, Pima County, Pittsburgh, Portland, San Jose, Santa Monica, Tucson, King County RHA, Santa Monica HA, Alameda County, Albuquerque, Baltimore, Bellevue, Bellingham, Bremerton, Dane County, Eugene, Hennepin County, Kitsap County, Los Angeles, Milwaukee, Multnomah County, Oakland, Petaluma, Ramsey County, Rochester, San Diego, San Mateo County, Santa Rosa, Sonoma County, Watsonville, CCHA, and SCCDC (collectively, “the Non-CoC HUD Plaintiffs”).

Lastly, the Plaintiffs challenging the HHS grants are Alameda County, Baltimore, Boston, Cambridge, Chicago, Columbus, Dane County, Denver, Eugene, Hennepin County, King County, Milwaukee, Minneapolis, Multnomah County, NYC, Oakland, Pacifica, Pierce

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County, Pima County, Ramsey County, Rochester, San Francisco, Santa Clara, San Mateo County, Snohomish County, and Wilsonville (collectively, “the HHS Plaintiffs”).⁵

III. FACTUAL BACKGROUND⁶

As stated above, initially this lawsuit concerned the allocation of congressionally appropriated federal funds through HUD and DOT grant programs, and several DOT operating administrations. Originally the lawsuit concerned only HUD grants through its CoC program, but with the second amended complaint, while Plaintiffs still challenge the funding conditions on the CoC grants (as well as DOT grants), they now object to funding conditions that HUD seeks to impose on all of its grants. In addition, the lawsuit has expanded to include grants administered by HHS and several of its operating administrations, including ACF, HRSA, NIH, SAMHSA, and the CDC.

A. HUD CoC and DOT Grants

HUD administers the CoC program with funds appropriated by Congress through the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11301(b)(2)–(3). The CoC program is designed to assist individuals and families experiencing homelessness by providing services to help such individuals move into transitional and permanent housing, with the goal of long-term stability. Congress established DOT in 1966 “to assure the coordinated, effective administration of the transportation programs of the Federal Government” and has established by statute a wide variety of grant programs that provide federal funds to state and local governments for public transit services. *See* Department of Transportation Act, Pub. L. No. 89-670, 80 Stat. 931 (1966).

⁵ Note, several Plaintiffs fall into more than one Plaintiff group.

⁶ This Court assumes familiarity with the detailed fact section set forth in its June 3, 2025 order granting Plaintiffs’ motions for a preliminary injunction. Dkt. No. 169.

1. The Funding Conditions on HUD CoC and DOT Grants

In the first two motions for a preliminary injunction, Plaintiffs charged HUD and DOT with imposing funding conditions that are not authorized by statute on HUD CoC and DOT grants and are therefore unlawful. Plaintiffs argued that the new funding conditions sought to coerce grant recipients dependent on federal funding into implementing the Trump Administration's policy agenda. Specifically, Plaintiffs objected to the following six conditions with respect to the CoC grants:

- A. The recipient "shall not use grant funds to promote 'gender ideology,' as defined in E.O. 14168 Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government";
- B. The recipient "agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the U.S. Government's payment decisions for purposes of [the False Claims Act, 31 U.S.C. § 3729(b)(4)]";
- C. The recipient "certifies that it does not operate any programs that violate any applicable Federal anti-discrimination laws, including Title VI of the Civil Rights Act of 1964";
- D. The recipient "shall not use any Grant Funds to fund or promote elective abortions, as required by E.O. 14182, Enforcing the Hyde Amendment";
- E. "No state or unit of general local government that receives funding under this grant may use that funding in a manner that by design or effect facilitates the subsidization or promotion of illegal immigration or abets policies that seek to shield illegal aliens from deportation"; and
- F. "Subject to the exceptions provided by [the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA")], the recipient must use SAVE, or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States."

Dkt. No. 11 (“McSpadden Decl.”), Ex. A at 3. And Plaintiffs objected to the following three conditions with respect to the DOT grants:

- A. “Pursuant to section (3)(b)(iv)(A), Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, the Recipient agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government’s payment decisions for purposes of [the False Claims Act, 31 U.S.C. § 3729(b)(4)]”;
- B. “Pursuant to section (3)(b)(iv)(B), Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, by entering into this Agreement, Recipient certifies that it does not operate any programs promoting diversity, equity, and inclusion (DEI) initiatives that violate any applicable Federal anti-discrimination laws”; and
- C. “[T]he Recipient will cooperate with Federal officials in the enforcement of Federal law, including cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE) and other Federal offices and components of the Department of Homeland Security in the enforcement of Federal immigration law.”

Dkt. No. 71 at ¶¶ 164, 172. In addition, the new funding conditions also required recipients to comply with all executive orders. McSpadden Decl., Ex. A at 1, ¶ 5; Dkt. No. 71 at ¶¶ 168, 170.

Plaintiffs challenged Defendants’ imposition of the foregoing conditions on the grants, arguing that the conditions are unconstitutional, violate the APA, and exceed statutory authority. They further argued that they would be irreparably harmed if the conditions were imposed on the grants and sought injunctive relief from this Court.

2. This Court Grants Injunctive Relief to Plaintiffs

This Court determined that Plaintiffs were entitled to a preliminary injunction because they satisfied the *Winter* factors. Dkt. No. 169 at 30 (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). Plaintiffs established that they are likely to succeed on the merits of their APA claim because Defendants’ actions are contrary to the constitution, in excess of statutory

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authority, and arbitrary and capricious. *Id.* at 30-38. Plaintiffs also demonstrated that they were likely to suffer irreparable harm in the absence of preliminary injunctive relief and that the balance of equities weighed in favor of Plaintiffs. *Id.* at 39-45. Therefore, among other relief, the Court enjoined Defendants from:

(1) imposing or enforcing the new funding conditions, as defined in Plaintiffs’ motions for preliminary injunction, or any materially similar terms or conditions with respect to any HUD CoC or DOT funds awarded to Plaintiffs;

(2) with respect to Plaintiffs, rescinding, withholding, cancelling, or otherwise not processing any HUD CoC and/or DOT Agreements, or pausing, freezing, impeding, blocking, cancelling, terminating, delaying, withholding, or conditioning HUD CoC and/or DOT funds, based on such terms or conditions, including without limitation failing or refusing to process and otherwise implement grants signed with changes or other objection to conditions enjoined by this preliminary injunction;

(3) requiring Plaintiffs to make any “certification” or other representation related to compliance with such terms or conditions; or

(4) refusing to issue, process, or sign HUD CoC and/or DOT Agreements based on Plaintiffs’ participation in this lawsuit.

Id. at 46-48.

3. New HUD CoC and DOT Plaintiffs

Plaintiffs allege that despite this Court enjoining Defendants from imposing the unlawful funding conditions on the Original Plaintiffs’ HUD CoC grants, Defendants are attempting to impose the conditions on CoC grants awarded to Alameda County, Albuquerque, Baltimore, Dane County, Hennepin County, Milwaukee, Multnomah County, Oakland, Petaluma, Ramsey County, San Mateo County, and Sonoma County—the New CoC Plaintiffs. Dkt. No. 184 at ¶¶ 292-293. According to Plaintiffs, the CoC grants will allow the New CoC Plaintiffs “to continue homelessness assistance programs, ensuring [their] ability to serve their residents so they [will] not experience a sudden drop off in the availability of housing services, permanent and

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1 transitional housing, and other assistance.” *Id.* at ¶ 300. Plaintiffs further allege that in reliance
2 on the awards, many of the New CoC Plaintiffs “already notified service providers of
3 forthcoming funding and/or contracted with service providers for homelessness assistance
4 services.” *Id.* at ¶ 301.

5 In addition, Plaintiffs allege that Defendants also continue to impose the funding
6 conditions on DOT grants awarded to Alameda County, Albuquerque, Baltimore, Bellevue,
7 Bellingham, Bremerton, Cambridge, Dane County, Eugene, Healdsburg, Hennepin County,
8 Kitsap County, Los Angeles, Milwaukee, Milwaukee County, Multnomah County, Oakland,
9 Pacifica, Pasadena, Petaluma, PSRC, Ramsey County, Rochester, Rohnert Park, San Diego, San
10 Mateo County, Santa Rosa, SCTA, and Watsonville—the New DOT Plaintiffs. According to
11 Plaintiffs, each of the New DOT Plaintiffs “previously received, currently receive, or are
12 otherwise eligible to receive DOT grants, directly and/or on a pass-through basis. *Id.* at ¶ 391.
13 Plaintiffs further allege that each of the New DOT Plaintiffs rely on the DOT grants to undertake
14 transportation-related projects for the benefit of their communities.

15 Plaintiffs claim that “[t]he grant conditions that Defendants seek to impose leave [the
16 New CoC and DOT] Plaintiffs with the Hobson’s choice of accepting illegal conditions that are
17 without authority, contrary to the Constitution, and accompanied by the poison pill of heightened
18 risk of FCA claims or forgoing the benefit of grant funds—paid for (at least partially) through
19 local federal taxes—that are necessary for crucial local services.” *Id.* at ¶ 623. Finally, Plaintiffs
20 assert that loss of these grant funds would result in loss of billions of dollars in funding for
21 critical services and projects for the New CoC and DOT Plaintiffs, destabilizing their

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1 communities. *Id.* at ¶¶ 625-627. Plaintiffs request that this Court extend its injunction against
2 Defendants to the New CoC and DOT Plaintiffs’ grants.

3 **B. Non-CoC HUD Grants**

4 Plaintiffs allege that in addition to CoC grants, many of them receive or are otherwise
5 eligible to receive non-CoC HUD grants—the Non-CoC HUD Plaintiffs. These grants include
6 congressionally appropriated funding for homelessness assistance, affordable housing,
7 community development programs, and other services that benefit the Non-CoC HUD Plaintiffs’
8 communities, including the Community Development Block Grant (“CDBG”) program, 42
9 U.S.C. §§ 5303–06; the Emergency Solutions Grant (“ESG”) program, which funds emergency
10 shelters and homelessness services, *id.* §§ 11371–78; the Home Investment Partnerships
11 (“HOME”) program, which supports affordable housing, *id.* §§ 12741–56; and the Housing
12 Opportunities for Persons with AIDS (“HOPWA”) program, *id.* §§ 12901–12. Dkt. No. 184 at ¶¶
13 302-358.

14 Plaintiffs allege, and Defendants do not dispute, that HUD seeks to impose on *all* HUD
15 grants substantially similar funding conditions to those that this Court previously enjoined. As
16 evidence of this, Plaintiffs point to the fact that in April 2025, HUD amended its General
17 Administrative, National, and Departmental Policy Requirements and Terms (the “HUD Policy
18 Terms”) that sets forth the “various laws and policies that may apply to recipients of” HUD grant
19 awards. Dkt. No. 184 at ¶ 516. The amended HUD Policy Terms list President Trump’s
20 executive orders among the “laws and policies that may apply” to HUD grants as well as
21 language materially the same as the previously enjoined funding conditions. *Id.* at ¶ 520.

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1 In addition, Plaintiffs note that in May 2025, HUD amended its standard Applicant and
2 Recipient Assurances and Certifications (“the HUD Certifications”) to require applicants to
3 certify that they “[w]ill not use Federal funding to promote diversity, equity, and inclusion (DEI)
4 mandates, policies, programs, or activities that violate any applicable Federal antidiscrimination
5 laws.” Dkt. No. 271, Amaral Decl., Ex. B; Dkt. No. 184 at ¶ 522. Local governments and
6 agencies must submit the HUD Certifications with certain consolidated plans and/or action plans
7 annually as a condition to receiving CDBG, ESG, HOME, and HOPWA formula funding.

8 Lastly, on June 5, 2025, HUD’s Office of Community Planning and Development
9 (“CPD”), which administers the CoC, CDBG, ESG, HOME, and HOPWA programs, issued a
10 letter announcing HUD’s decision to impose on all CPD formula grants funding conditions
11 substantially similar to the previously enjoined funding conditions. Dkt. No. 184 at ¶¶ 524-525.
12 These funding conditions include requiring recipients to certify that they: (1) “shall not use grant
13 funds to promote ‘gender ideology,’” (2) will not “use any grant funds to fund or promote
14 elective abortions,” (3) will “use SAVE, or an equivalent verification system approved by the
15 Federal government, to prevent any Federal public benefit from being provided to an ineligible
16 alien who entered the United States illegally or is otherwise unlawfully present in the United
17 States,” and (4) agree that they will not use funding to “subsidiz[e] or promot[e] ... illegal
18 immigration or [to] seek to shield illegal aliens from deportation.” *Id.* at ¶¶ 527-533.

19 Plaintiffs claim that HUD has already notified at least three Non-CoC HUD Plaintiffs that
20 their consolidated/action plans violate the newly imposed funding conditions. For instance, HUD
21 threatened to disapprove Petaluma’s 2025 Consolidated Action Plan for CDBG funds because it
22 allegedly violated the DEI, gender ideology, and immigration funding conditions by including

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1 references to “equity,” “environmental justice,” “transgender or gender non-conforming,” and
2 “undocumented individuals.” Dkt. No. 244, Cochran Decl., Ex. B. Bellevue and King County
3 received similar notices. Dkt. No. 195, Esparza Decl., Ex. A; Dkt. No. 222, Third Supp. Marshall
4 Decl., Ex. B. HUD gave Petaluma, Bellevue, and King County less than 48 hours to remedy the
5 purported violations by scrubbing their plans of the offending language. *Id.*; Cochran Decl. at ¶
6 12. King County’s plan was subsequently disapproved. Dkt. No. 223, Holcomb Decl., Ex. A.

7 Plaintiffs further allege that the Non-CoC HUD Plaintiffs face immediate and irreparable
8 harm from imposition of the funding conditions. Several Non-CoC HUD Plaintiffs face a
9 deadline of Saturday, August 16, 2025 to submit consolidated/action plans to HUD or forfeit the
10 formula grant funding. Dkt. No. 186 at 1; Dkt. No. 184 at ¶ 623. Plaintiffs assert that loss of this
11 funding would disrupt the lives of the Non-CoC HUD Plaintiffs’ most vulnerable residents,
12 likely leading to evictions and increased homelessness and further straining local resources.
13 According to Plaintiffs, even a temporary loss of funding would set back efforts to create and
14 preserve affordable housing, ameliorate homelessness, and house low-income individuals living
15 with HIV/AIDS. Dkt. No. 184 at ¶ 625. Plaintiffs request that this Court enjoin Defendants from
16 imposing the new funding conditions on the Non-CoC HUD Plaintiffs’ grants.

17 C. HHS Grants

18 HHS administers both competitive grant programs and formula and block grant programs
19 that provide funds to local governments to enhance the health and well-being of their
20 communities. In administering grant programs, HHS often acts through its operating divisions
21 and agencies. For instance, ACF administers discretionary and formula grants to support
22 programs that serve children and families. HRSA awards a variety of competitive and formula

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1 grants including Primary Care/Health Centers, Health Workforce Training, HIV/AIDS, Organ
2 Donation, Maternal and Child Health, Rural Health, the Health Center Program, and the Ryan
3 White HIV/AIDS program. SAMHSA administers both competitive, discretionary grant
4 programs and noncompetitive formula grant programs to fund substance use and mental health
5 services to advance the behavioral health and improve the lives of those living with mental and
6 substance use disorders. The CDC provides funding to support public health systems and
7 activities by local and state governments. It supports programs such as HIV/AIDS, Viral
8 Hepatitis, STI, and TB Prevention; Chronic Disease Prevention and Health Promotion; Public
9 Health Preparedness and Response; and Injury Prevention and Control.

10 Congress annually appropriates funding for these HHS grant programs, setting forth
11 priorities and directives to the Secretary of HHS with respect to the funding. Examples of such
12 appropriation legislation are: Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat.
13 1523–28, 1567–98; Consolidated Appropriations Act, 2022, Pub. L. 117-103, 136 Stat. 397–
14 402, 441–74; Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 4808–13,
15 4854–87; Consolidated Appropriations Act, 2024, Pub. L. 118-42, 138 Stat. 272–77, 397–419.

16 Plaintiffs allege that the HHS Plaintiffs have received, currently receive, or are otherwise
17 eligible to receive federal grants administered by ACF, HRSA, SAMHSA, and CDC, among
18 others. Collectively, HHS Plaintiffs rely on over \$2 billion in appropriated federal funds from
19 HHS grant programs which support essential health programs and services in the HHS Plaintiffs'
20 communities, such as child welfare assistance, adoption and foster care services, and healthcare
21 for low-income individuals and those living with HIV/AIDS. Dkt. No. 184 at ¶¶ 475.

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1 Plaintiffs claim that like HUD and DOT, HHS has begun attaching unlawful funding
 2 conditions to HHS grants that are substantially similar to those that this Court previously
 3 enjoined, including by updating HHS’s Grants Policy Statement in April 2025 (“the 2025 HHS
 4 GPS”) to provide:

5 [R]ecipients must comply with all applicable Federal anti-discrimination laws
 6 material to the government’s payment decisions for purposes of 31 U.S.C. §
 372(b)(4).

7 (1) Definitions. As used in this clause –

8 (a) DEI means “diversity, equity, and inclusion.”

(b) DEIA means “diversity, equity, inclusion, and accessibility.”

9 (c) Discriminatory equity ideology has the meaning set forth in Section 2(b) of
 10 Executive Order 14190 of January 29, 2025.

11

12 By accepting the grant award, recipients are certifying that . . . [t]hey do not, and
 13 will not during the term of this financial assistance award, operate any programs
 14 that advance or promote DEI, DEIA, or discriminatory equity ideology in violation
 15 of Federal anti-discrimination laws.

16 Dkt. No. 184 at ¶ 606.⁷

17 Plaintiffs further alleged that in addition to these agency-wide changes, several HHS
 18 operating divisions and agencies have issued their own general terms and conditions
 19 incorporating the 2025 HHS GPS. For instance, ACF updated its Standard Terms and Conditions
 20 that apply to both discretionary and non-discretionary awards, to add a certification that states:

21 ⁷ On July 24, 2025, after Plaintiffs filed the instant motion, HHS updated the 2025 HHS GPS, removing express
 22 references to DEI but stating: “By applying for or accepting federal funds from HHS, recipients certify compliance
 23 with all federal antidiscrimination laws and these requirements and that complying with those laws is a material
 24 condition of receiving federal funding streams.” 2025 HHS GPS at 18, <https://www.hhs.gov/sites/default/files/hhs-grants-policy-statement-july-2025.pdf>. Thus, the foregoing certification is required even to just “apply[]” for federal
 25 funds from HHS. The 2025 HHS GPS also states that “[r]ecipients are responsible for ensuring subrecipients,
 contractors, and partners also comply.” *Id.*

1 *For new awards made on or after May 8, 2025, the following is effective*
 2 immediately:

3 Recipients must comply with all applicable Federal anti-discrimination laws
 4 material to the government’s payment decisions for purposes of [the FCA].

5 (1) Definitions. As used in this clause –

6 (a) DEI means “diversity, equity, and inclusion.”

7 (b) DEIA means “diversity, equity, inclusion, and
 8 accessibility.”

9 (c) Discriminatory equity ideology has the meaning
 10 set forth in Section 2(b) of Executive Order 14190 of
 11 January 29, 2025.

12 (e) Federal anti-discrimination laws means Federal
 13 civil rights law that protect individual Americans
 14 from discrimination on the basis of race, color, sex,
 15 religion, and national origin.

16 (2) Grant award certification.

17 (a) By accepting the grant award, recipients are
 18 certifying that:

19 (i) They do not, and will not during the term of this
 20 financial assistance award, operate any programs that
 21 advance or promote the following in violation of
 22 Federal anti-discrimination laws: DEI, DEIA, or
 23 discriminatory equity ideology.

24 *Id.* at ¶ 609.⁸

25 Likewise, HRSA issued updated general terms and conditions applicable to all active
 awards. The revised HRSA terms and conditions incorporate the 2025 HHS GPS and also
 contain the following new provision:

⁸ On July 29, 2025, ACF updated its Standard Terms and Conditions again to remove express references to DEI.

By accepting this award, including the obligation, expenditure, or drawdown of award funds, recipients, whose programs, are covered by Title IX certify as follows:

- Recipient is compliant with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., including the requirements set forth in Presidential Executive Order 14168 titled Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq., and Recipient will remain compliant for the duration of the Agreement.
- The above requirements are conditions of payment that go to the essence of the Agreement and are therefore material terms of the Agreement.
- Payments under the Agreement are predicated on compliance with the above requirements, and therefore Recipient is not eligible for funding under the Agreement or to retain any funding under the Agreement absent compliance with the above requirements.
- Recipient acknowledges that this certification reflects a change in the government's position regarding the materiality of the foregoing requirements and therefore any prior payment of similar claims does not reflect the materiality of the foregoing requirements to this Agreement.
- Recipient acknowledges that a knowing false statement relating to Recipient's compliance with the above requirements and/or eligibility for the Agreement may subject Recipient to liability under the False Claims Act, 31 U.S.C. § 3729, and/or criminal liability, including under 18 U.S.C. §§ 287 and 1001.

Dkt. No. 184 at ¶ 611. Plaintiffs allege that SAMHSA and the CDC have also updated their terms to contain funding conditions that require recipients not to promote gender ideology. *Id.* at ¶¶ 607-08.

Plaintiffs argue that foregoing funding conditions are unconstitutional, violate the APA, exceed statutory authority, and are President Trump's attempt to coerce grant recipients that rely on federal funds into implementing his political agenda. According to Plaintiffs, withholding "HHS grants from the HHS Plaintiffs would threaten or eliminate critical individual and public health services for millions of residents. Loss of funding could decimate public health budgets

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1 and cause residents, including those most vulnerable, to lose access to meals, medical care,
2 housing and lifesaving social safety net services. Loss of funding could also devastate local
3 public health and child welfare agencies, who may be forced to conduct significant layoffs and
4 operational reductions.” *Id.* at ¶ 628. Therefore, Plaintiffs request that this Court enjoin HHS
5 and/or its operating agencies from imposing the new funding conditions on the HHS Plaintiffs’
6 grants.

7 IV. DISCUSSION

8 A. Legal Standard

9 A preliminary injunction is a matter of equitable discretion and is “an extraordinary
10 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such
11 relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). “A plaintiff seeking
12 preliminary injunctive relief must establish that [it] is likely to succeed on the merits, that [it] is
13 likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities
14 tips in [its] favor, and that an injunction is in the public interest.” *Id.* at 20. Alternatively, an
15 injunction may issue where “the likelihood of success is such that serious questions going to the
16 merits were raised and the balance of hardships tips sharply in [the plaintiff’s] favor,” provided
17 that the plaintiff can also demonstrate the other two *Winter* factors. *All. for the Wild Rockies v.*
18 *Cottrell*, 632 F.3d 1127, 1131–32 (9th Cir. 2011) (citation and internal quotation marks omitted).
19 Under either standard, Plaintiffs bear the burden of making a clear showing that they are entitled
20 to this extraordinary remedy. *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010). The
21 most important *Winter* factor is likelihood of success on the merits. *See Disney Enters., Inc. v.*
22 *VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

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B. Plaintiffs' Claims Are Reviewable under the APA

As they did when they opposed Plaintiffs' first two motions for a preliminary injunction, Defendants argue that Plaintiffs' claims are not reviewable by this Court because the actions at issue are committed to the agencies' discretion. While "the APA establishes a basic presumption of judicial review for one suffering legal wrong because of agency action, that presumption can be rebutted by a showing that . . . the agency action is committed to agency discretion by law." *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1905 (2020) (cleaned up); 5 U.S.C. § 701(a)(2). Where that is the case, courts have no authority to review or set aside the agency's action.

However, as this Court previously concluded, this exception to the "basic presumption of judicial review" does not apply in this case. Agency action is committed to agency discretion only in those "rare instances where statutes are drawn in such broad terms that in a given case there is no law to apply, thereby leaving the court with no meaningful standard against which to judge the agency's exercise of discretion." *ASSE Int'l, Inc. v. Kerry*, 803 F.3d 1059, 1068 (9th Cir. 2015); *Texas v. United States*, 809 F.3d 134, 168 (5th Cir. 2015), as revised (Nov. 25, 2015). Once again, Defendants have failed to demonstrate that the contested conditions fall within "[t]his limited category of unreviewable actions." *Regents*, 140 S. Ct. at 1905 (citing *Weyerhaeuser Co. v. United States Fish and Wildlife Serv.*, 139 S. Ct. 361, 370 (2018)). As before, Defendants rely on *Lincoln v. Vigil*, 508 U.S. 182 (1993) for the principle that an agency's decision to cancel a program is unreviewable because how to allocate funds "'from a lump-sum appropriation' is an 'administrative decision traditionally regarded as committed to agency discretion.'" Dkt. No. 334 at 11 (citing 508 U.S. at 192). This Court previously concluded that the agency action in *Lincoln*

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1 differed materially from the actions at issue in this case, namely that the funds at issue in this case
2 are not appropriate in undifferentiated “lump sums” as they were in *Lincoln*. Dkt. No. 169 at 28.
3 Rather, the grants at issue here “abound with specific directives” that provide substantial guidance
4 as to how the agencies’ discretion should be exercised in implementing these programs. *Id.* at 28-
5 29. Defendants ignore entirely this Court’s previous conclusion, and the Court once again
6 concludes that Plaintiffs’ claims do not involve the “narrow category” of agency actions that are
7 unreviewable under the APA.

8 **C. Plaintiffs Are Likely to Succeed on the Merits of Their APA Claims**

9 The Court has already determined that Defendants’ attempt to impose the challenged
10 funding conditions on the CoC and DOT grants violated the APA. *See generally* Dkt. No. 169.
11 Defendants present no argument as to why this conclusion should not apply equally to the New
12 CoC and DOT Plaintiffs; thus, the Court concludes that the New CoC and DOT Plaintiffs are also
13 likely to succeed on the merits of their APA claim and focuses the remainder of its analysis on the
14 Defendants’ actions with respect to the non-CoC HUD and HHS grants.

15 The APA broadly “sets forth the procedures by which federal agencies are accountable to
16 the public and their actions subject to review by the courts.” *Regents*, 140 S. Ct. at 1905 (quoting
17 *Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992)). Under the APA, agencies must “engage in
18 reasoned decisionmaking,” and courts are empowered to “hold unlawful and set aside agency
19 action . . . found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in
20 accordance with law; (B) contrary to constitutional right; [or] (C) in excess of statutory
21 jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2). As stated
22 above, Plaintiffs challenge Defendants’ actions as “contrary to constitutional right” and “in excess

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of statutory authority,” and as arbitrary and capricious. *See* Dkt. No. 184, Counts 5, 6, and 7, ¶¶ 670-703.

1. Defendants’ Actions Violate the APA as Contrary to the Constitution and in Excess of Statutory Authority (Counts 6 & 7)

(a) Separation of Powers Doctrine

Under the APA, a court may set aside an agency action that is “contrary to constitutional right, power, privilege, or immunity” or “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(B), (C). Plaintiffs challenge Defendants’ conditions as both contrary to the Constitution’s Separation of Powers doctrine and in excess of any authority conferred by Congress. Dkt. No. 184 at ¶¶ 690-703. As with this Court’s prior order enjoining Defendants’ actions, because the Separation of Powers doctrine and the APA’s “in excess of statutory authority” standard both turn on the same essential question—whether the agency acted within the bounds of its authority, either as conferred by the Constitution or delegated by Congress—the Court addresses the claims in a single analysis.

The Separation of Powers doctrine recognizes that the “United States Constitution exclusively grants the power of the purse to Congress, not the President.” *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1231 (9th Cir. 2018) (citing the Appropriations Clause, U.S. Const. art. I, § 9, cl. 7 (“No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”)). “The [Appropriations] Clause has a ‘fundamental and comprehensive purpose . . . to assure that public funds will be spent according to the letter of the difficult judgments reached by Congress as to the common good and not according to the individual favor of Government agents.’” *United States v. McIntosh*, 833 F.3d 1163, 1175 (9th Cir. 2016) (quoting *Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 427–28, 2473 (1990)).

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1 In contrast, “[t]here is no provision in the Constitution that authorizes the President to
2 enact, to amend, or to repeal statutes.” *Clinton v. City of New York*, 524 U.S. 417, 438 (1998).
3 “Aside from the power of veto, the President is without authority to thwart congressional will by
4 canceling appropriations passed by Congress.” *San Francisco*, 897 F.3d at 1231. Quite the
5 contrary, it is well-established that an executive agency “literally has no power to act . . . unless
6 and until Congress confers power upon it.” *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374
7 (1986); *see California v. Trump*, 379 F. Supp. 3d 928, 941 (N.D. Cal. 2019), *aff’d*, 963 F.3d 926
8 (9th Cir. 2020). When an agency is charged with administering a statute, “both [its] power to act
9 and how [it is] to act [are] authoritatively prescribed by Congress.” *City of Arlington v. FCC*, 569
10 U.S. 290, 297 (2013). “Absent congressional authorization, the Administration may not
11 redistribute or withhold properly appropriated funds in order to effectuate its own policy goals.”
12 *San Francisco*, 897 F.3d at 1235.

13 Plaintiffs argue that in attempting to condition disbursement of funds in part on grounds
14 not authorized by Congress, but rather on Executive Branch policy, Defendants are acting in
15 violation of the Separation of Powers principle and “in excess of statutory jurisdiction, authority,
16 or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(B), (C). Plaintiffs argue that the
17 statutes authorizing the grants at issue do not confer on Defendants the kind of authority they are
18 attempting to assert. For the reasons explained below, and in its June 3, 2025 order, the Court
19 agrees.

20 (b) The Non-CoC HUD Funding Conditions

21 Plaintiffs contend that the contested conditions must be set aside because the statute’s
22 underlying the non-CoC HUD grants do not give HUD the authority to impose “conditions that

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1 prohibit DEI or promotion of ‘gender ideology’ or ‘elective abortion’ or require participation in
2 federal immigration enforcement, immigration status verification, or adherence to EOs unrelated
3 to the grant’s purpose.” Dkt. No. 186 at 9. Defendants counter that they do have the authority to
4 impose the challenged conditions, citing to HUD regulations that require “federal agencies [to]
5 incorporate ‘statutory, executive order, other Presidential directive, or regulatory requirements’
6 into the terms and conditions” of HUD grants. Dkt. No. 334 at 8 citing 2 C.F.R. §
7 200.211(c)(1)(ii). However, as this Court noted in rejecting this argument the first time
8 Defendants raised it, “an agency *regulation* cannot create *statutory* authority; only Congress can
9 do that.” Dkt. No. 169 at 33 (emphasis in original). Defendants must point to a *statutory* source
10 that confers the authority. Without such a source, the agency action violates the separation of
11 powers principle.

12 Next Defendants argue that the challenged conditions “merely require grant recipients to
13 agree to comply with existing federal laws, like federal antidiscrimination laws” and “Congress
14 has expressly authorized HUD to require that grantees comply with federal laws.” Dkt. No. 334 at
15 8 (citing 42 U.S.C. § 5304(b)(6) (“Any [CDBG] grant ... shall be made only if the grantee
16 certifies to the satisfaction of the Secretary that ... the grantee will comply with the other
17 provisions of this chapter and with other applicable laws.”)). The problem with Defendants’
18 argument is that they fail to acknowledge the evidence in the record that demonstrates that
19 Defendants interpret federal antidiscrimination laws in a manner that is inconsistent with well-
20 established legal precedent. For example, on April 4, 2025, DOT Secretary Duffy issued a letter
21 “To All Recipients of U.S. Department of Transportation Funding” in which he stated that “*any*
22 policy, program, or activity” that is “designed to achieve so called “diversity, equity, and
23

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inclusion,’ or ‘DEI[]’ goals[] presumptively violates Federal law” even if the policy, program, or activity is “described in neutral terms.” Dkt. No. 6 at 346 (emphasis added). Secretary Duffy’s statement can easily be interpreted to mean that a federal grant recipient that has a “policy” to accommodate individuals with disabilities so that those individuals can participate in an “activity” has “presumptively violate[d] Federal law.” This, of course, is inconsistent with well-established federal precedent that requires entities that receive federal funds to provide reasonable accommodations for qualified individuals with disabilities so that they can participate in their programs. *See e.g., U.S. Dept. of Transp. v. Paralyzed Veterans of America*, 477 U.S. 597, 604 (1986) (“Section 504 prohibits discrimination against any qualified handicapped individual under ‘any program or activity receiving Federal financial assistance.’”); *Muir v. United States Dept. of Homeland Security*, 2025 WL 2088450, *6 (D.C. Cir. July 25, 2025) (“Section 504 of the Rehabilitation Act prohibits discrimination against disabled persons by recipients of federal funds.”); *Ward v. McDonald*, 762 F.3d 24, 28 (D.C. Cir. 2014) (It is a basic tenet of the Rehabilitation Act of 1973 “that the government must take reasonable affirmative steps to accommodate the handicapped, except where undue hardship would result”).

Likewise, on May 19, 2025, U.S. Deputy Attorney General Todd Blanche sent a memorandum to all United States Attorneys, among others, in which he stated that federal fund recipients may run afoul of the False Claims Act if they allow transgender individuals to use bathrooms consistent with their gender identities (*i.e.*, “allow[] men to intrude into women’s bathrooms”). Dkt. No. 65 at 5. Deputy Attorney General Blanche’s statement contradicts the decisions of multiple appellate courts that have held that federal law forbids discrimination based on transgender status. *See e.g., Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616–17 (4th

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1 Cir. 2020) (transgender student’s exclusion from bathroom constituted Title IX discrimination);
2 *A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760, 769 (7th Cir. 2023)
3 (“[D]iscrimination against transgender persons is sex discrimination for Title IX purposes . . .”).

4 And as recently as July 29, 2025, U.S. Attorney General Pam Bondi issued a
5 memorandum titled “Guidance for Recipients of Federal Funds regarding Unlawful
6 Discrimination” in which she purports to “clarif[y] the application of federal antidiscrimination
7 laws to programs or initiatives that may involve discriminatory practices, including those labeled
8 as Diversity, Equity, and Inclusion (“DEI”) programs.” Dkt. No. 331, Ex. A at 1. Among other
9 “clarifications”, Attorney General Bondi states that the use of “[f]acially neutral criteria (e.g.,
10 ‘cultural competence,’ ‘lived experience,’ geographic targeting) that function as proxies for
11 protected characteristics violate federal law if designed or applied with the intention of
12 advantaging or disadvantaging individuals based on protected characteristics.” *Id.* at 2. This
13 “clarification,” however, is inconsistent with Supreme Court precedent that has “consistently
14 declined to find constitutionally suspect” the adoption of race-neutral criteria “out of a desire . . .
15 to improve racial diversity and inclusion”—even where the decision-maker was “well aware” the
16 race-neutral criteria “correlated with race.” *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864,
17 885–86 (4th Cir. 2023) (internal quotation marks and citation omitted) (citing, *inter alia*, *Tex.*
18 *Dep’t of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 545 (2015). Nor
19 does Supreme Court precedent prohibit the use of diversity statements for the purpose of
20 advancing racial diversity goals; to the contrary, in *Students for Fair Admissions, Inc. v.*
21 *President & Fellows of Harvard College*, the Court described these goals as “commendable” and
22 “worthy” (though insufficient to justify race-based admissions). 600 U.S. 181, 214-15, 230

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(2023) (“[N]othing in this opinion should be construed as prohibiting universities from considering an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise.”); *United States v. Skrametti*, 145 S. Ct. 1816, 1854 (2025) (Thomas, J., concurring) (suggesting strict scrutiny does not apply to “a university’s decision to credit ‘an applicant’s discussion of how race affected his or her life’” simply because it is “inextricably bound up with” the applicant’s race) (cleaned up).

The above demonstrates that Plaintiffs are at the mercy of Defendants’ interpretation of federal antidiscrimination laws, regardless of how those laws are interpreted by the courts. Indeed, this has already played out in this case where HUD recently informed King County that it was rejecting King County’s CDBG Consolidated Plan submission for Program Year 2025 because HUD “is questioning the accuracy of King County’s ... certification that the [CDBG] funds described in [the plan] will be administered in conformity with applicable laws, including Executive Orders.” Dkt. No. 223 at 5-6. Among other reasons HUD expressed concern was King County’s use of words such as “equity,” “migrant,” and “immigrant” throughout the plan. *Id.* at 6-8. In order to assuage HUD’s concerns, King County was instructed to replace “all ‘equity’ references” throughout the plan with “activities and actions that do not violate any applicable Federal anti-discrimination laws, including Title VI of the Civil Rights Act of 1964” and to replace all references to “migrant” and “immigrant” with “legal/documental migrant/immigrant.” *Id.* at 8. However, as Plaintiffs aptly point out, “[n]o case law ... suggests that using words like ‘equity’ or ‘migrant’ violates *any* law.” dkt. no. 335 at 3, thus refuting Defendants’ claim that the challenged funding requirements “merely require grant recipients to

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agree to comply with existing federal laws, like federal antidiscrimination laws,” dkt. no. 334 at 8.⁹

Moreover, Defendants’ ability to impose the challenged conditions on the non-CoC HUD grants is further constrained by 42 U.S.C. § 12711, which prohibits HUD from “denying funds made available under [HUD] programs . . . based on the adoption, continuation, or discontinuation” of any lawful local policies. Stated differently, “HUD may not . . . *condition* funding on changes to local policies.” *Cnty. of Westchester v. U.S. Dep’t of Housing and Urban Dev.*, 802 F.3d 413, 433 (2d Cir. 2015) (emphasis in original). Yet that is exactly what Defendants attempt to do here; they are leveraging the Non-CoC HUD Plaintiffs’ dependence on federal funding to coerce them into replacing their own local policies with the Trump Administration’s political agenda.

⁹ Nor are the new funding conditions authorized by PRWORA or the Hyde Amendment as Defendants claim. The challenged funding conditions purport to require non-CoC HUD Plaintiffs to “use SAVE, or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States.” Dkt. No. 184 at ¶¶ 492, 517. While PRWORA does provide that noncitizens without qualifying immigration status are ineligible for certain “Federal public benefit[s],” 8 U.S.C. § 1611(a), it does not require grant recipients to verify eligibility *until* the U.S. Attorney General has promulgated regulations implementing a verification requirement. *See id.* § 1642(a); § 1642(b) (“Not later than 24 months after the date the regulations described in subsection (a) are adopted, a State that administers a program that provides a Federal public benefit shall have in effect a verification system that complies with the regulations.”). The Attorney General is yet to promulgate a final regulation implementing a verification requirement. *See* Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61344 (Nov. 17, 1997); Verification of Eligibility for Public Benefits, 63 Fed. Reg. 41662 (Aug. 4, 1998) (proposed rule). By requiring grant recipients to verify eligibility by using SAVE (or an equivalent system) without the benefit of implementing regulations and/or the two-year ramp-up period, Defendants are attempting to rewrite PRWORA, not implement it.

The Hyde Amendment also does not authorize the challenged funding condition that requires the Non-CoC HUD Plaintiffs to certify that no grant funds will be used “to promote elective abortions.” Dkt. No. 1854 at ¶¶ 494, 520. The Hyde Amendment bars use of federal funds to pay for or to require a person to facilitate an abortion; it does not prohibit federally funded programs from promoting elective abortions, which could be read to include providing program participants with information about lawful abortions. Pub. L. 118-42, §§ 202–03, 138 Stat. 153.

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1 Lastly, the challenged funding conditions conflict with statutory provisions authorizing
2 the HUD grant programs. Far from barring diversity-related “inclusion,” Congress *requires*
3 consideration of diversity when allocating HUD funds. For instance, the HUD Secretary is
4 required to set aside CDBG funds for “[s]pecial purpose grants,” including grants to “historically
5 Black colleges.” 42 U.S.C. § 5307(b)(2); *see also id.* § 5307(c) (requiring CDBG funds be
6 allocated to provide “assistance to economically disadvantaged and minority students”). And in
7 authorizing the HOME and HOPWA programs, Congress acted to “improve housing
8 opportunities for all residents of the United States, particularly members of disadvantaged
9 minorities, on a nondiscriminatory basis.” 42 U.S.C. § 12702(3). Congress also requires HOME
10 recipients “to establish and oversee a minority outreach program . . . to ensure the inclusion, to
11 the maximum extent possible, of minorities and women, and entities owned by minorities and
12 women . . . in all contracts[] entered into by the participating jurisdiction.” 42 U.S.C. § 12831(a).

13 Based on the foregoing, the Court concludes that the Non-CoC HUD Plaintiffs are likely
14 to prevail on their claim that in attempting to impose the challenged funding conditions on the
15 recipients of non-CoC funds, Defendants have run afoul of the Separation of Powers doctrine, and
16 are acting in excess of statutory authority, and that under the APA, those conditions must be set
17 aside.

18 (c) The HHS Grants Funding Conditions

19 Defendants’ attempts to identify statutory authority for imposing the contested conditions
20 on the HHS grants suffer from similar deficiencies. As an initial matter, Defendants once again
21 rely on agency regulations for the authority to impose the conditions, but as noted above, agency
22 regulations are not the equivalent of statutory authority, and HHS’ attempt to rely on them also

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1 fails. Nor does Defendants’ reliance on generic statutory provisions authorizing the HHS
2 Secretary to prescribe the “form and manner” for grant applications and the “information” it
3 must “contain” fair any better. Dkt. No. 335 at 6 (citing 42 U.S.C. §§ 254b(k)(1), 300ff-15(a),
4 (b), 290ee-1(b)(1)(B)). These provisions only encompass prescriptions as to form, manner, and
5 information, and Defendants’ claim that such ministerial provision authorize wide-ranging
6 substantive conditions on hotly debated policy choices runs afoul of the well-established
7 principle that “Congress ... does not alter the fundamental details of a regulatory scheme in
8 vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.”
9 *Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 468 (2001).

10 Defendants also invoke Title IX of the Education Amendments Act of 1972, which
11 prohibits sex discrimination by federal education funding recipients, as authority for requiring
12 HHS grant recipients to comply with Presidential Executive Order 14168 “Defending Women
13 From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.”
14 This Executive Order mandates that “[f]ederal funds shall not be used to promote gender
15 ideology” and requires grant recipients to “recognize two sexes, male and female” and that
16 “[t]hese sexes are not changeable and are grounded in fundamental and incontrovertible reality.”
17 But nothing in Title IX mandates such understandings. To the contrary, as cited above courts
18 have concluded that failure to recognize an individual’s transgender status constituted
19 discrimination under Title IX. *See e.g., Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616–
20 17 (4th Cir. 2020) (transgender student’s exclusion from bathroom constituted Title IX
21 discrimination); *A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760, 769 (7th Cir.
22 2023) (“[D]iscrimination against transgender persons is sex discrimination for Title IX purposes

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...”). As such, far from enforcing Title IX, Defendants seek to graft new requirements into the statute.

Accordingly, the Court concludes that the HHS Plaintiffs are likely to prevail on their claim that in attempting to impose the conditions in the 2025 HHS GPS and the various operating agencies and divisions’ terms and conditions, Defendants have acted in a manner that violates the Separation of Powers doctrine and exceeds statutory authority, and that under the APA those conditions must be set aside.

2. Defendants’ Actions Were “Arbitrary and Capricious,” 5 U.S.C. § 702(2)(A) (Count 5)

Plaintiffs also assert that the challenged conditions must be set aside as “arbitrary” and “capricious.” 5 U.S.C. § 706(2)(A); Dkt. No. 184 at ¶¶ 671-688. The APA requires agencies to engage in “reasoned decisionmaking,” and their actions must be “reasonable and reasonably explained.” *Michigan v. EPA*, 576 U.S. 743, 750 (2015); *Ohio v. EPA*, 603 U.S. 279, 292 (2024) (cleaned up). An agency must offer “a satisfactory explanation for its action,” and cannot rely on “factors which Congress has not intended it to consider.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Plaintiffs maintain that Defendants have not followed these prescriptions and have failed to provide reasonable explanations for any of the challenged funding conditions.

Defendants do not dispute that they have not offered contemporary, reasoned explanations for the imposition of the challenged funding conditions; rather, they argue that they are not required to do so because the conditions are not subject to notice-and-comment rulemaking. Defendants are mistaken. “The APA, by its terms, provides a right to judicial review of all ‘final agency action for which there is no other adequate remedy in a court,’” *Bennett v.*

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Spear, 520 U.S. 154, 175 (1997) (quoting 5 U.S.C. § 704), whether or not that action is subject to notice-and-comment rulemaking. *See Cal. Communities Against Toxics v. EPA*, 934 F.3d 627, 635–36 (D.C. Cir. 2019). Defendants do not contest that the challenged funding conditions are final agency actions. As such, each agency must have “reasonably considered the relevant issues and reasonably explained its decision” to impose the challenged conditions. *Barton v. Off. of Navajo*, 125 F.4th 978, 982 (9th Cir. 2025) (cleaned up).

At most, the Defendants rely on reference to the Trump Administration’s executive orders to justify the imposition of the challenged funding conditions, but as this Court previously stated “rote incorporation of executive orders—especially ones involving politically charged policy matters that are the subject of intense disagreement and bear no substantive relations to the agency’s underlying action—does not constitute ‘reasoned decisionmaking.’” Dkt. No. 169 at 38. Thus, the Court concludes that Plaintiffs are likely to succeed on the merit of their claim that Defendants’ imposition of the challenged funding conditions is arbitrary and capricious, which is an independent ground for setting aside those conditions.¹⁰

¹⁰ Plaintiffs have asserted several other claims both under the APA and under the Constitution. See Dkt. No. 184 at ¶¶ 630-669, 704-724. The Court does not reach these claims at this stage, in part because “[t]he Court need only find that Plaintiffs are likely to succeed on one of [their] claims for [the likelihood-of-success] factor to weigh in favor of a preliminary injunction,” and a ruling on Plaintiffs’ additional claims would not affect the relief afforded. *Aids Vaccine Advoc. Coal. v. United States Dep’t of State*, No. CV 25-00400 (AHA), 2025 WL 752378, at *7 (D.D.C. Mar. 10, 2025). Furthermore, the Court adheres to the “fundamental and longstanding principle of judicial restraint” that requires courts to “avoid reaching constitutional questions in advance of the necessity of deciding them.” *Al Otro Lado v. Exec. Off. for Immigr. Rev.*, No. 22-55988, 2024 WL 5692756, at *14 (9th Cir. May 14, 2025) (vacating district court’s “entry of judgment for Plaintiffs on the constitutional due process claim” where judgment was granted in Plaintiffs’ favor on APA claim) (citing *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 445 (1988)); *see also Washington v. Trump*, 441 F. Supp. 3d 1101, 1125 (W.D. Wash. 2020) (“[A] court should not reach a constitutional question if there is some other ground upon which to dispose of the case. Given that this Court has already determined that Defendants’ [action] violates the APA and, therefore, can dispose of the case on that basis, the Court exercises restraint and declines to reach the constitutional claims raised by Washington.”) (cleaned up, citing *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 205 (2009); *Harmon v. Brucker*, 355 U.S. 579, 581 (1958)). Because Plaintiffs are likely to prevail on Counts 5, 6 and 7 of their Second Amended Complaint—that the challenged actions were arbitrary and capricious, contrary to the constitutional Separation of

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D. Irreparable Injury

A plaintiff seeking a preliminary injunction must establish that it is likely to suffer irreparable harm in the absence of preliminary relief. *Winter*, 555 U.S. at 20. Such harm “is traditionally defined as harm for which there is no adequate legal remedy, such as an award of damages.” *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014) (citing *Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir.1991)).

The Court addressed this issue when previously granting preliminary relief, stating:

Plaintiffs allege several forms of irreparable harm that are either presently occurring, or are likely to occur, in the absence of injunctive relief. They are facing a choice between two untenable options; as this Court has already determined, ‘Defendants have put Plaintiffs in the position of having to choose between accepting conditions that they believe are unconstitutional and risking the loss of hundreds of millions of dollars in federal grant funding, including funding that they have already budgeted and are committed to spending.’ On the one hand, being forced to accept conditions that are contrary either to statute or to the Constitution (or both) is a constitutional injury, and constitutional injuries are ‘unquestionably’ irreparable. *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017).

On the other hand, avoiding the constitutional offense by refusing to agree to the new funding conditions may very well result in the loss of access to promised grant funds. And indeed, Defendants have not denied that Plaintiffs would be assuming this risk by not signing the agreements. They merely complain that Plaintiffs have not provided details as to when exactly that loss will occur. But this argument misses the point. It is this looming risk itself that is the injury, and one that Plaintiffs are already suffering. Courts evaluating similar circumstances have recognized that this injury of acute budgetary uncertainty is irreparable; ‘[w]ithout clarification regarding the Order’s scope or legality, the Counties will be obligated to take steps to mitigate the risk of losing millions of dollars in federal funding, which will include placing funds in reserve and making cuts to services. These mitigating steps will cause the Counties irreparable harm.’ *Santa Clara v. Trump*, 250 F. Supp. 3d 497, 537 (N.D. Cal. 2017). While a preliminary injunction will not eliminate these risks entirely, Plaintiffs have demonstrated it will at least mitigate them pending

Powers doctrine, and in excess of Defendants’ statutory authority, and must therefore be set aside under the APA—the Court’s inquiry into the likelihood-of-success factor is at an end.

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1 resolution of this case on its merits.

2 Furthermore, Plaintiffs have submitted substantive and detailed evidence
3 illustrating the ways in which a loss of grant funds would be devastating and
4 irreparable if these risks in fact materialize. . . . The administration's attempt to
5 compel Plaintiffs' compliance with unrelated policy objectives by leveraging the
6 needs of our most vulnerable fellow human beings is breathtaking in its callousness.
7 Defendants' argument that these harms are not irreparable is simply wrong.

8 Dkt. No. 169 at 39-42 (some internal citations omitted).

9 Plaintiffs have once again provided comprehensive evidence (in the form of nearly 100
10 declarations from local government and agency administrators, *see* dkt. nos. 187-282)
11 demonstrating that should the loss of the grant funds come to pass, the resulting harm would be
12 severe and irreparable. In addition, Plaintiffs have provided substantial evidence demonstrating
13 that this harm is not, as Defendants suggest, merely monetary in nature. Adequate financial
14 compensation for the destabilization of immediate and future budgets, reductions in workforce,
15 hundreds of shelter-unstable families losing access to housing, loss of access to health care
16 services to vulnerable populations, and the termination of transportation projects simply does not
17 exist. Therefore, the Court concludes that the harms Plaintiffs have alleged are quintessentially
18 irreparable in nature and can be avoided only by entry of the requested injunction.

19 **E. The Balance of Equities and Public Interest Favor Plaintiffs**

20 In deciding whether to grant an injunction, "courts must balance the competing claims of
21 injury and must consider the effect on each party of the granting or withholding of the requested
22 relief." *Disney Enters*, 869 F.3d at 866 (quoting *Winter*, 555 U.S. at 24). Courts "explore the
23 relative harms to applicant and respondent, as well as the interests of the public at large." *Barnes*
24 *v. E-Sys., Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1305 (1991) (internal
25 quotation marks and citation omitted). Where the government is a party, the balance of equities

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1 and public interest factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir.
2 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

3 Defendants once again argue that the balance of equities and the public interest favor
4 Defendants because “[en]suring compliance with federal laws is assuredly in the public interest.”
5 Dkt. No. 334 at 14. But as discussed *supra*, the contested funding conditions are not
6 congressionally authorized, nor do they merely seek compliance with federal law. Defendants do
7 not have a legitimate interest in ensuring that funds are spent pursuant to conditions that were
8 likely imposed in violation of the APA and/or the Constitution. *See Valle del Sol Inc. v. Whiting*,
9 732 F.3d 1006, 1029 (9th Cir. 2013) (there is no legitimate government interest in violating
10 federal law). Defendants also contend that “Plaintiffs could be compensated for any lost money
11 after a ruling on the merits” in this case. Dkt. No. 334 at 14. The Court has already rejected the
12 notion that Plaintiffs could be adequately compensated for the devastation that would result from
13 the loss of the federal funding. Thus, for the reasons outlined above, the irreparable harms
14 Plaintiffs face in the absence of an injunction tip the balance of equities sharply in their favor.

15 **F. The Court Denies Defendants’ Request for a Bond and Request to Stay**

16 Defendants request that if this Court issues an injunction, it be stayed pending any appeal
17 and further requests that this Court require Plaintiffs to post a bond for the value of the specific
18 grants subject to the injunction pursuant to Fed. R. Civ. P. 65(c). The Court denies both requests.
19 Defendants have not met the standard for a stay. *See, e.g., Maryland v. Dep’t of Agriculture*, JKB-
20 25-0748, 2025 WL 800216, at *26 (D. Md. Mar. 13, 2025) (“It is generally logically inconsistent
21 for a court to issue a TRO or preliminary injunction and then stay that order, as the findings on
22 which those decisions are premised are almost perfect opposites.”). Nor have Defendants argued,

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1 let alone demonstrated, that they will suffer any material harm from the injunction the Court
2 issues today. “Despite the seemingly mandatory language, Rule 65(c) invests the district court
3 with discretion as to the amount of security required, if any.” *Johnson v. Couturier*, 572 F.3d
4 1067, 1086 (9th Cir. 2009) (citations and internal quotation marks omitted). “In particular, the
5 district court may dispense with the filing of a bond when it concludes there is no realistic
6 likelihood of harm to the defendant from enjoining his or her conduct.” *Id.* (cleaned up).

7 V. CONCLUSION

8 For the foregoing reasons,

9 1. Plaintiffs’ Third Motion for Preliminary Injunction is GRANTED;

10 2. HUD and its officers, agents, servants, employees, and attorneys, and any other
11 persons who are in active concert or participation with them (collectively “Enjoined HUD CoC
12 Parties”), are enjoined from (1) imposing or enforcing the CoC Grant Conditions, as defined in
13 the Appendix II to this Order, or any materially similar terms or conditions at any stage of the
14 grantmaking process, including but not limited to in new grant applications, notices of funding
15 availability or opportunity, certifications, grant agreements, or post-award submissions, with
16 respect to any CoC funds awarded to the New CoC Plaintiffs or members of their Continuums;
17 (2) as to the New CoC Plaintiffs or members of their Continuums, rescinding, withholding,
18 cancelling, or otherwise not processing any CoC Agreements, or pausing, freezing, impeding,
19 blocking, cancelling, terminating, delaying, withholding, or conditioning CoC funds, based on
20 such terms or conditions, including without limitation failing or refusing to process and
21 otherwise implement grants signed with changes or other objections to conditions enjoined by
22 this preliminary injunction; (3) requiring the New CoC Plaintiffs or members of their

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Continuums to make any “certification” or other representation related to compliance with such terms or conditions; or (4) refusing to issue, process, or sign CoC Agreements based on New CoC Plaintiffs’ participation in this lawsuit;

3. The Enjoined HUD CoC Parties shall immediately treat any actions taken to implement or enforce the CoC Grant Conditions or any materially similar terms or conditions as to the New CoC Plaintiffs or their Continuums, including but not limited to any delays or withholding of funds based on such conditions, as null, void, and rescinded; while this preliminary injunction is in effect, shall treat as null and void any such conditions included in any grant agreement executed by any New CoC Plaintiff or member of a New CoC Plaintiff’s Continuum; and may not retroactively apply such conditions to grant agreements during the effective period of this preliminary injunction. The Enjoined HUD CoC Parties shall immediately take every step necessary to effectuate this order, including without limitation clearing any administrative, operational, or technical hurdles to implementation;

4. HUD, all of the HUD program offices, and their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with them (collectively “Enjoined HUD Parties”), are enjoined from (1) imposing or enforcing the Non-CoC HUD Grant Conditions, as defined in the Appendix II to this Order, or any materially similar terms or conditions at any stage of the grant-making process, including but not limited to in new grant applications, notices of funding availability or opportunity, certifications, grant agreements, or post-award submissions, with respect to any non-CoC HUD funds awarded to the Non-CoC HUD Plaintiffs, their consortia, or their subrecipients; (2) as to the Non-CoC HUD Plaintiffs, their consortia, or their subrecipients, rescinding, withholding, cancelling, or otherwise

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1 not processing any non-CoC HUD awards, or pausing, freezing, impeding, blocking, cancelling,
2 terminating, delaying, withholding, or conditioning non-CoC HUD funds, based on such terms or
3 conditions, including without limitation failing or refusing to process and otherwise implement
4 grants signed with changes or other objections to conditions enjoined by this preliminary
5 injunction; (3) requiring the Non-CoC HUD Plaintiffs, their consortia, or their subrecipients to
6 make any “certification” or other representation related to compliance with such terms or
7 conditions; or (4) refusing to issue, process, or sign grant agreements based on the Non-CoC
8 HUD Plaintiffs’ participation in this lawsuit;

9 5. The Enjoined HUD Parties shall immediately treat any actions taken to implement
10 or enforce the Non-CoC HUD Grant Conditions or any materially similar terms or conditions as
11 to the Non-CoC HUD Plaintiffs, their consortia, or their subrecipients, including but not limited
12 to any delays or withholding of funds based on such conditions, as null, void, and rescinded;
13 while this preliminary injunction is in effect, shall treat as null and void any such conditions
14 included in any grant agreement executed by any Non-CoC HUD Plaintiff, a member of its
15 consortium, or its subrecipient; and may not retroactively apply such conditions to grant
16 agreements during the effective period of this preliminary injunction. The Enjoined HUD Parties
17 shall immediately take every step necessary to effectuate this order, including without limitation
18 clearing any administrative, operational, or technical hurdles to implementation;

19 6. DOT, all of the DOT operating agencies, and their officers, agents, servants,
20 employees, and attorneys, and any other persons who are in active concert or participation with
21 them (collectively “Enjoined DOT Parties”), are enjoined from (1) imposing or enforcing the
22 DOT Grant Conditions, as defined in the Appendix II to this Order, or any materially similar

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terms or conditions at any stage of the grant-making process, including but not limited to in new grant applications, notices of funding availability or opportunity, certifications, grant agreements, or post-award submissions, as to any DOT funds awarded, directly or indirectly, to the New DOT Plaintiffs or their subrecipients; (2) as to the New DOT Plaintiffs or their subrecipients, rescinding, withholding, cancelling, or otherwise not processing the DOT grant awards, or pausing, freezing, impeding, blocking, canceling, terminating, delaying, withholding, or conditioning DOT funds, based on such terms or conditions, including without limitation failing or refusing to process and otherwise implement grants signed with changes or other objections to conditions enjoined by this preliminary injunction; (3) requiring the New DOT Plaintiffs or their subrecipients to make any “certification” or other representation related to compliance with such terms or conditions; or (4) refusing to issue, process, or sign grant agreements based on New DOT Plaintiffs’ participation in this lawsuit;

7. The Enjoined DOT Parties shall immediately treat any actions taken to implement or enforce the DOT Grant Conditions or any materially similar terms or conditions as to DOT funds awarded, directly or indirectly, to the New DOT Plaintiffs or their subrecipients, including but not limited to any delays or withholding of funds based on such conditions, as null, void, and rescinded; while this preliminary injunction is in effect, shall treat as null and void any such conditions included in any grant agreement executed by any New DOT Plaintiff or its subrecipient; and may not retroactively apply such conditions to grant agreements during the effective period of this preliminary injunction. The Enjoined DOT Parties shall immediately take every step necessary to effectuate this order, including without limitation clearing any administrative, operational, or technical hurdles to implementation;

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8. HHS, all of the HHS operating divisions and agencies, and their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with them (collectively “Enjoined HHS Parties”), are enjoined from (1) imposing or enforcing the HHS Grant Conditions, as defined in the Appendix II to this Order, or any materially similar terms or conditions at any stage of the grant-making process, including but not limited to in new grant applications, notices of funding availability or opportunity, certifications, grant agreements, or post-award submissions, as to any HHS funds awarded, directly or indirectly, to the HHS Plaintiffs or their subrecipients; (2) as to the HHS Plaintiffs or their subrecipients, rescinding, withholding, cancelling, or otherwise not processing HHS grant awards, or pausing, freezing, impeding, blocking, canceling, terminating, delaying, withholding, or conditioning HHS funds, based on such terms or conditions, including without limitation failing or refusing to process and otherwise implement grants signed with changes or other objections to conditions enjoined by this preliminary injunction; (3) requiring the HHS Plaintiffs or their subrecipients to make any “certification” or other representation related to compliance with such terms or conditions; or (4) refusing to issue, process, or sign grant agreements based on HHS Plaintiffs’ participation in this lawsuit;

9. The Enjoined HHS Parties shall immediately treat any actions taken to implement or enforce the HHS Grant Conditions or any materially similar terms or conditions as to HHS funds awarded, directly or indirectly, to the HHS Plaintiffs or their subrecipients, including but not limited to any delays or withholding of funds based on such conditions, as null, void, and rescinded; while this preliminary injunction is in effect, shall treat as null and void any such conditions included in any grant agreement executed by any HHS Plaintiff or its subrecipient;

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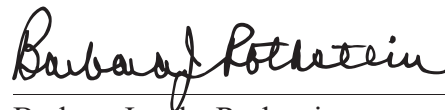
1 and may not retroactively apply such conditions to grant agreements during the effective period
2 of this preliminary injunction. The Enjoined HHS Parties shall immediately take every step
3 necessary to effectuate this order, including without limitation clearing any administrative,
4 operational, or technical hurdles to implementation;

5 10. Defendants' counsel shall provide written notice of this Order to all Defendants
6 and their employees by the end of business on the second day after issuance of this Order;

7 11. By the end of business on the second day after issuance of this Order, the
8 Defendants SHALL FILE on the Court's electronic docket and serve upon Plaintiffs a Status
9 Report documenting the actions that they have taken to comply with this Order, including a copy
10 of the foregoing notice (paragraph 10 above) and an explanation as to whom the notice was sent;

11 12. This order shall remain in effect pending further orders from this Court.

12 Dated this 12th day of August 2025.

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15 Barbara Jacobs Rothstein
16 U.S. District Court Judge
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APPENDIX I

A. Complaint filed May 2, 2025

1. Plaintiffs

a. CoC Plaintiffs¹¹

King County, Pierce County, Snohomish County, City and County of San Francisco, Santa Clara County, Boston, Columbus, and New York City.

b. DOT Plaintiff

King County

2. Defendants

United States Department of Housing and Urban Development (“HUD”), Department of Transportation (“DOT”), and the Federal Transit Administration (“FTA”), as well as the agencies’ heads in their official capacities (Scott Turner in his official capacity as Secretary of HUD, Sean Duffy in his official capacity as Secretary of DOT, and Matthew Welbes in his official capacity as acting Director of the FTA).

B. First Amended Complaint filed May 21, 2025

1. Plaintiffs added:

a. Added CoC Plaintiffs

Metropolitan Government of Nashville & Davidson County (“Nashville”), Pima County, Cambridge, San Jose, Pasadena, Tucson, King County Regional Homelessness Authority located in King County, Washington (“King County RHA”), Santa Monica Housing Authority, California (“Santa Monica HA”)

b. Added DOT Plaintiffs

Denver, Nashville, Pima County, Sonoma County, Bend, Chicago, Culver City, Minneapolis, Pittsburgh, San Jose, Santa Monica, Tucson, Wilsonville, Central Puget Sound Regional Transit Authority located in King, Pierce, and Snohomish Counties, Washington (“CPSRTA”), Intercity Transit located in Thurston County, Washington (“Intercity Transit”), Port

¹¹ A Plaintiff may be included in more than one Plaintiff Group.

of Seattle, San Francisco County Transportation Authority, located in the City and County of San Francisco, California (“SFCTA”), and Treasure Island Mobility Management Agency located in Treasure Island and Yerba Buena Island, California (“TIMMA”)

2. Defendants added

Federal Highway Administration (“FHWA”), the Federal Aviation Administration (“FAA”), the Federal Railroad Administration (“FRA”), and component heads in their official capacities (Tariq Bokhari as the acting Administrator of FTA,¹² Gloria M. Shepard as the acting Director of FHWA, Chris Rocheleau as acting Administrator of FAA, and Drew Feeley as acting Administrator of FRA).

C. Second Amended Complaint filed July 10, 2025

1. Plaintiffs Added¹³

a. CoC Plaintiffs

Alameda County, Albuquerque, Baltimore, Columbus, Dane County, Hennepin County, Milwaukee, Multnomah County, Oakland, Petaluma, Ramsey County, San Mateo County, and Sonoma County.

b. DOT Plaintiffs

Alameda County, Albuquerque, Baltimore, Bellevue, Bellingham, Bremerton, Cambridge, Dane County, Eugene, Healdsburg, Hennepin County, Kitsap County, Los Angeles, Milwaukee, Milwaukee County, Multnomah County, Oakland, Pacifica, Pasadena, Petaluma, PSRC, Ramsey County, Rochester, Rohnert Park, San Diego, San Mateo County, Santa Rosa, SCTA, and Watsonville.

c. Non-CoC HUD Plaintiffs

King County, Pierce County, Snohomish County, Boston, Columbus, San Francisco, Santa Clara, NYC, Bend Cambridge, Chicago, Culver City, Minneapolis, Nashville, Pasadena, Pima County, Pittsburgh, Portland, San Jose, Santa Monica, Tucson, King County RHA, Santa Monica HA, Alameda County, Albuquerque, Baltimore, Bellevue, Bellingham, Bremerton, Dane County, Eugene, Hennepin County, Kitsap County, Los Angeles, Milwaukee, Multnomah County, Oakland,

¹² Replacing Matthew Welbes in his official capacity as acting Director of the FTA.

¹³ Some of these are new Plaintiffs; some are previous Plaintiffs but with new claims.

Petaluma, Ramsey County, Rochester, San Diego, San Mateo County, Santa Rosa, Sonoma County, Watsonville, CCHA, and SCCDC

d. HHS Plaintiffs

Alameda County, Baltimore, Boston, Cambridge, Chicago, Columbus, Dane County, Denver, Eugene, Hennepin County, King County, Milwaukee, Minneapolis, Multnomah County, NYC, Oakland, Pacifica, Pierce County, Pima County, Ramsey County, Rochester, San Francisco, Santa Clara, San Mateo County, Snohomish County, and Wilsonville.

2. Defendants added

HHS and its agencies, including the Administration for Children and Families (“ACF”), Health Resources and Services Administration (“HRSA”), National Institutes of Health (“NIH”), Substance Abuse and Mental Health Services Administration (“SAMHSA”), and the Centers for Disease Control and Prevention (“CDC”), as well as Robert F. Kennedy in his official capacity as the Secretary of HHS.

APPENDIX II

The “CoC Grant Conditions” enjoined by this Order are the following terms and conditions:

- The recipient or applicant shall not use grant funds to promote “gender ideology,” as defined in Executive Order 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government;
- The recipient or applicant agrees that its compliance in all respects with all applicable Federal antidiscrimination laws is material to the U.S. Government’s payment decisions for purposes of section 3729(b)(4) of title 31, United States Code;
- The recipient or applicant certifies that it does not operate any programs that violate any applicable Federal anti-discrimination laws, including Title VI of the Civil Rights Act of 1964;
- The recipient or applicant shall not use any Grant Funds to fund or promote elective abortions, as required by Executive Order 14182, Enforcing the Hyde Amendment;

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- 1 – The recipient or applicant must administer its grant in accordance
2 with all applicable immigration restrictions and requirements,
3 including the eligibility and verification requirements that apply
4 under title IV of the Personal Responsibility and Work Opportunity
5 Reconciliation Act of 1996, as amended (8 U.S.C. 1601-1646)
6 (“PRWORA”) and any applicable requirements that HUD, the
7 Attorney General, or the U.S. Center for Immigration Services [sic]
8 may establish from time to time to comply with PRWORA,
9 Executive Order 14218, or other Executive Orders or immigration
10 laws;
11 – No state or unit of general local government that receives funding
12 under this grant may use that funding in a manner that by design or
13 effect facilitates the subsidization or promotion of illegal
14 immigration or abets policies that seek to shield illegal aliens from
15 deportation;
16 – Subject to the exceptions provided by PRWORA, the recipient or
17 applicant must use SAVE, or an equivalent verification system
18 approved by the Federal government, to prevent any Federal public
19 benefit from being provided to an ineligible alien who entered the
20 United States illegally or is otherwise unlawfully present in the
21 United States;
22 – The recipient or applicant agrees that use of Grant Funds and its
23 operation of projects assisted with Grant Funds are governed by all
24 Executive Orders.

25 The “**Non-CoC HUD Grant Conditions**” enjoined by this Order are the following terms
and conditions:

- 1 – The recipient or applicant will not use Federal funding to promote
2 diversity, equity, and inclusion (“DEI”) mandates, policies,
3 programs, or activities that violate any applicable Federal
4 antidiscrimination laws;
5 – The recipient or applicant shall not use grant funds to promote
6 “gender ideology,” as defined in Executive Order 14168, Defending
7 Women from Gender Ideology Extremism and Restoring Biological
8 Truth to the Federal Government;
9 – The recipient or applicant agrees that its compliance in all respects
10 with all applicable Federal anti-discrimination laws is material to the

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U.S. Government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code;

- The recipient or applicant certifies that it does not operate any programs that violate any applicable Federal antidiscrimination laws, including Title VI of the Civil Rights Act of 1964;
- The recipient or applicant shall not use any grant funds to fund or promote elective abortions, as required by Executive Order 14182, Enforcing the Hyde Amendment;
- The recipient or applicant must administer its grant in accordance with all applicable immigration restrictions and requirements, including the eligibility and verification requirements that apply under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended (8 U.S.C. 1601-1646) ("PRWORA") and any applicable requirements that HUD, the Attorney General, or the U.S. Citizenship and Immigration Services may establish from time to time to comply with PRWORA, Executive Order 14218, or other Executive Orders or immigration laws;
- If applicable, no state or unit of general local government that receives or applies for funding under this grant may use that funding in a manner that by design or effect facilitates the subsidization or promotion of illegal immigration or abets policies that seek to shield illegal aliens from deportation;
- Unless excepted by PRWORA, the recipient or applicant must use SAVE, or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States.
- The recipient or applicant must comply with applicable existing and future Executive Orders, as advised by the Department, including but not limited to E.O. 14182, Enforcing the Hyde Amendment; Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity; Executive Order 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government; and Executive Order 14151, Ending Radical and Wasteful Government DEI Programs and Preferencing.

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1 The “DOT Grant Conditions” enjoined by this Order are the following terms and
2 conditions:

- 3 – Pursuant to section (3)(b)(iv)(A), Executive Order 14173, *Ending*
4 *Illegal Discrimination and Restoring Merit-Based Opportunity*, the
5 recipient or applicant agrees that its compliance in all respects with
6 all applicable Federal antidiscrimination laws is material to the
7 government’s payment decisions for purposes of section 3729(b)(4)
8 of title 31, United States Code;
- 9 – Pursuant to section (3)(b)(iv)(B), Executive Order 14173, *Ending*
10 *Illegal Discrimination and Restoring Merit-Based Opportunity*, by
11 entering into this Agreement, the recipient or applicant certifies that
12 it does not operate any programs promoting diversity, equity, and
13 inclusion (“DEI”) initiatives that violate any applicable Federal anti-
14 discrimination laws;
- 15 – The recipient or applicant agrees to comply with executive orders,
16 including but not limited to Executive Order 14168 titled Defending
17 Women From Gender Ideology Extremism and Restoring
18 Biological Truth to the Federal Government, as they relate to the
19 application, acceptance, and use of Federal funds for this project or
20 grant;
- 21 – The recipient or applicant will cooperate with Federal officials in
22 the enforcement of Federal law, including cooperating with and not
23 impeding U.S. Immigration and Customs Enforcement (“ICE”) and
24 other Federal offices and components of the Department of
25 Homeland Security in the enforcement of Federal immigration law;
- The recipient or applicant will follow applicable federal laws
pertaining to Subchapter 12, and be subject to the penalties set forth
in 8 U.S.C. § 1324, Bringing in and harboring certain aliens, and 8
U.S.C. § 1327, Aiding or assisting certain aliens to enter.
- The recipient or applicant must comply with other applicable federal
nondiscrimination laws, regulations, and requirements, and follow
federal guidance prohibiting discrimination;
- The recipient or applicant must comply with all applicable executive
orders as they relate to the application, acceptance, and use of
Federal funds for this Project;

ORDER GRANTING PLAINTIFFS’ THIRD
MOTION FOR PRELIMINARY INJUNCTION

- Performance under this agreement or application shall be governed by and in compliance with the following requirements, as applicable, to the type of organization of the recipient or applicant and any applicable sub-recipients. The applicable provisions to this agreement or application include, but are not limited to, the following: Bringing in and harboring certain aliens – 8 U.S.C. 1324; Aiding or assisting certain aliens to enter – 8 U.S.C. 1327; Executive Order 14151, Ending Radical and Wasteful Government DEI Programs and Preferencing; Executive Order 14168 Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government; and Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity.

The “**HHS Grant Conditions**” enjoined by this Order are the following terms and conditions:

- The recipient or applicant must comply with all applicable Federal anti-discrimination laws material to the government’s payment decisions for purposes of 31 U.S.C. § 372(b)(4).

(1) Definitions. As used in this clause –

(a) DEI means “diversity, equity, and inclusion.”

(b) DEIA means “diversity, equity, inclusion, and accessibility.”

(c) Discriminatory equity ideology has the meaning set forth in Section 2(b) of Executive Order 14190 of January 29, 2025.

....

(e) Federal anti-discrimination laws means Federal civil rights law that protect individual Americans from discrimination on the basis of race, color, sex, religion, and national origin.

(2) Grant award certification.

(a) By accepting the grant award, recipients are certifying that:

(i) They do not, and will not during the term of this financial assistance award, operate any programs that advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws;

- 1 – By applying for or accepting federal funds from HHS, recipients
2 certify compliance with all federal antidiscrimination laws and these
3 requirements and that complying with those laws is a material
4 condition of receiving federal funding streams. Recipients are
5 responsible for ensuring subrecipients, contractors, and partners also
6 comply.
- 7 – All activities proposed in your application and budget narrative must
8 be in alignment with the current Executive Orders;
- 9 – Recipients are required to comply with all applicable Executive Orders;
- 10 – Funds cannot be used to support or provide services, either directly
11 or indirectly, to removable or illegal aliens;
- 12 – By accepting this award, including the obligation, expenditure, or
13 drawdown of award funds, recipients or applicants, whose
14 programs, are covered by Title IX certify as follows:

15 The recipient or applicant is compliant with Title IX of the
16 Education Amendments of 1972, as amended, 20 U.S.C. §§
17 1681 et seq., including the requirements set forth in Presidential
18 Executive Order 14168 titled Defending Women From Gender
19 Ideology Extremism and Restoring Biological Truth to the
20 Federal Government, and Title VI of the Civil Rights Act of
21 1964, 42 U.S.C. §§ 2000d et seq., and Recipient will remain
22 compliant for the duration of the Agreement.

23 The above requirements are conditions of payment that go the
24 essence of the Agreement and are therefore material terms of the
25 Agreement.

 Payments under the Agreement are predicated on compliance
with the above requirements, and therefore the recipient or
applicant is not eligible for funding under the Agreement or to
retain any funding under the Agreement absent compliance with
the above requirements.

 The recipient or applicant acknowledges that this certification
reflects a change in the government's position regarding the
materiality of the foregoing requirements and therefore any prior
payment of similar claims does not reflect the materiality of the
foregoing requirements to this Agreement.

1 The recipient or applicant acknowledges that a knowing false
2 statement relating to recipient's or applicant's compliance with
3 the above requirements and/or eligibility for the Agreement may
4 subject the recipient or applicant to liability under the False
5 Claims Act, 31 U.S.C. § 3729, and/or criminal liability,
6 including under 18 U.S.C. §§ 287 and 1001.
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23 ORDER GRANTING PLAINTIFFS' THIRD
24 MOTION FOR PRELIMINARY INJUNCTION

 DSHS WASHINGTON STATE Department of Social and Health Services	AAA AGREEMENT WCF Implementation	DSHS CONTRACT #: 2669-71089
This Agreement is by and between the State of Washington Department of Social and Health Services (DSHS) and the Contractor identified below, and is issued pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW.		Program Contract Number Contractor Contract Number
CONTRACTOR NAME Snohomish County		CONTRACTOR DBA Snohomish County Aging & Disability Services Division
CONTRACTOR ADDRESS 3000 Rockefeller Avenue MS 502 Everett, WA 98201		CONTRACTOR DSHS INDEX NUMBER 1065
CONTRACTOR CONTACT TELEPHONE (425) 388-7360	CONTRACTOR FAX (425) 388-7304	CONTRACTOR E-MAIL ADDRESS laura.white@snoco.org
DSHS ADMINISTRATION Aging & Long Term Support Admin	DSHS DIVISION Assistant Secretarys Office - AL TSA	DSHS CONTRACT CODE 1028LS-69
DSHS CONTACT NAME AND TITLE Ali Lafontaine Program Manager		DSHS CONTACT ADDRESS Blake East 4500 10th Ave SE Lacey, WA 98503
DSHS CONTACT TELEPHONE Click here to enter text.	DSHS CONTACT FAX Click here to enter text.	DSHS CONTACT E-MAIL ADDRESS ali.lafontaine@dshs.wa.gov
IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT? No		ASSISTANCE LISTING NUMBERS
CONTRACT START DATE 07/01/2026	CONTRACT END DATE 06/30/2027	MAXIMUM CONTRACT AMOUNT \$2,045,196.00
ATTACHMENTS. The following Exhibits are attached to and incorporated into this Interlocal Agreement by reference: ☒ Exhibits (specify): No Data Security Exhibit Exhibit A, Statement of Work; Exhibit B, Funding Model; Exhibit C, State BARS form; Exhibit D, WCF AAA Provider Targets-SYF27; Exhibit E, AAA Provider Capacity Smartsheet Dashboard.		
The terms and conditions of this Agreement are an integration and representation of the final, entire, and exclusive understanding between the parties superseding and merging all previous agreements, writings, and communications, oral or otherwise, regarding the subject matter of this Agreement. The parties signing below represent that they have read and understand this Agreement, and have the authority to execute this Agreement. This Agreement shall be binding on DSHS only upon signature by DSHS.		
CONTRACTOR SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED
DSHS SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED

AAA General Terms and Conditions

1. **Amendment.** This Agreement, or any term or condition, may be modified only by a written amendment signed by both parties. Only personnel authorized to bind each of the parties shall sign an amendment.
2. **Assignment.** Except as otherwise provided herein, the AAA shall not assign rights or obligations derived from this Agreement to a third party without the prior, written consent of the DSHS Contracts Administrator and the written assumption of the AAA's obligations by the third party.
3. **Client Abuse.** The AAA shall report all instances of suspected client abuse to DSHS, in accordance with RCW 74.34.
4. **Client Grievance.** The AAA shall establish a system through which applicants for and recipients of services under the approved area plans may present grievances about the activities of the AAA or any subcontractor(s) related to service delivery. Clients receiving Medicaid funded services must be informed of their right to a fair hearing regarding service eligibility specified in WAC 388-02 and under the provisions of the Administrative Procedures Act, Chapter 34.05 RCW.
5. **Compliance with Applicable Law.** At all times during the term of this Agreement, the AAA and DSHS shall comply with all applicable federal, state, and local laws, regulations, and rules, including but not limited to, nondiscrimination laws and regulations.
6. **Confidentiality.** The parties shall use Personal Information and other confidential information gained by reason of this Agreement only for the purpose of this Agreement. DSHS and the AAA shall not otherwise disclose, transfer, or sell any such information to any other party, except as provided by law or, in the case of Personal Information except as provided by law or with the prior written consent of the person to whom the Personal Information pertains. The parties shall maintain the confidentiality of all Personal Information and other confidential information gained by reason of this Agreement and shall return or certify the destruction of such information if requested in writing by the party to the Agreement that provided the information.
7. **AAA Certification Regarding Ethics.** By signing this Agreement, the AAA certifies that the AAA is in compliance with Chapter 42.23 RCW and shall comply with Chapter 42.23 RCW throughout the term of this Agreement.
8. **Debarment Certification.** The AAA, by signature to this Agreement, certifies that the AAA is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any Federal department or agency. The AAA also agrees to include the above requirement in all subcontracts into which it enters, resulting directly from the AAA's duty to provide services under this Agreement.
9. **Disputes.** In the event of a dispute between the AAA and DSHS, every effort shall be made to resolve the dispute informally and at the lowest level. If a dispute cannot be resolved informally, the AAA shall present their grievance in writing to the Assistant Secretary for Aging and Long-Term Support Administration. The Assistant Secretary shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. If the dispute remains unresolved after the Assistant Secretary's determination, either party may request intervention by the Secretary of DSHS, in which event the Secretary's process shall control. The Secretary will make a determination within 45 days. Participation in this dispute process shall precede any judicial or quasi-judicial action and shall be the final administrative remedy available to the parties. However, if the Secretary's determination is not made within 45 days, either party may proceed with judicial or quasi-judicial action without awaiting the Secretary's determination.
10. **Drug-Free Workplace.** The AAA shall maintain a work place free from alcohol and drug abuse.

AAA General Terms and Conditions

11. **Entire Agreement.** This Agreement including all documents attached to or incorporated by reference, contain all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind the parties.
12. **Governing Law and Venue.** The laws of the State of Washington govern this Agreement. In the event of a lawsuit by the AAA against DSHS involving this Agreement, venue shall be proper only in Thurston County, Washington. In the event of a lawsuit by DSHS against a County AAA involving this Agreement, venue shall be proper only as provided in RCW 36.01.050.
13. **Independent Status.** Except as otherwise provided in Paragraph 26 herein below, for purposes of this Agreement, the AAA acknowledges that the AAA is not an officer, employee, or agent of DSHS or the State of Washington. The AAA shall not hold out itself or any of its employees as, nor claim status as, an officer, employee, or agent of DSHS or the State of Washington. The AAA shall not claim for itself or its employees any rights, privileges, or benefits, which would accrue to an employee of the State of Washington. The AAA shall indemnify and hold harmless DSHS from all obligations to pay or withhold federal or state taxes or contributions on behalf of the AAA or the AAA's employees.
14. **Inspection.** Either party may request reasonable access to the other party's records and place of business for the limited purpose of monitoring, auditing, and evaluating the other party's compliance with this Agreement, and applicable laws and regulations. During the term of this Agreement and for one (1) year following termination or expiration of this Agreement, the parties shall, upon receiving reasonable written notice, provide the other party with access to its place of business and to its records which are relevant to its compliance with this Agreement and applicable laws and regulations. This provision shall not be construed to give either party access to the other party's records and place of business for any other purpose. Nothing herein shall be construed to authorize either party to possess or copy records of the other party.
15. **AAA Provider Contracting Insurance Requirements**

The AAA shall include the following insurance requirements in all AAA Provider Contracts entered into pursuant to this Contract, at AAA Provider Contractor's expense, the following insurance coverages, and comply with the following insurance requirements.

a. **General Liability Insurance**

The AAA Provider Contractor shall maintain Commercial General Liability Insurance or Business Liability Insurance, no less comprehensive than coverage under- Insurance Service Offices, Inc. (ISO) form CG 00-01, including coverage for bodily injury, property damage, and contractual liability. The amount of coverage shall be no less than \$2,000,000 per occurrence and \$4,000,000 General Aggregate. The policy shall include liability arising out of the parties' performance under their Contract, including but not limited to premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. The AAA, its elected and appointed officials, agents, and employees of the state, shall be named as additional insureds.

- b. In lieu of general liability insurance mentioned in Subsection a. above, if the AAA Provider Contractor is a sole proprietor with less than three (3) contracts, the AAA Provider Contractor may choose one of the following three (3) general liability policies, but only if attached to a professional liability policy. If selected the policy shall be maintained for the life of the contract.

Supplemental Liability Insurance, including coverage for bodily injury and property damage that will cover the AAA Provider Contractor wherever the service is performed with minimum limits of

AAA General Terms and Conditions

\$2,000,000 per occurrence; and \$4,000,000 General Aggregate. The AAA, its elected and appointed officials, agents, and employees shall be named as additional insureds;

Or

Workplace Liability Insurance, including coverage for bodily injury and property damage that provides coverage wherever the service is performed with minimum limits of \$2,000,000 per occurrence; and \$4,000,000 General Aggregate. The AAA, its elected and appointed officials, agents, and employees shall be named as additional insured:

Or

Premises Liability Insurance if services are provided only at their recognized place of business, including coverage for bodily injury, property damage with minimum limits of \$2,000,000 per occurrence; and \$4,000,000 General Aggregate. The AAA, its elected and appointed officials, agents, and employees shall be named as additional insureds.

c. Professional Liability—if needed (errors & omissions)

The AAA Provider Contractor shall maintain insurance of at least \$1,000,000 per occurrence, \$2,000,000 General Aggregate for malpractice or errors and omissions coverage against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use, and damages because of negligent acts, errors, and omissions in any way related to this contract.

d. Workers' Compensation

The AAA contractor shall comply with all applicable Workers' Compensation, occupational disease, and occupational health and safety laws and regulations. The AAA, State of Washington, and DSHS shall not be held responsible for claims for Workers' Compensation under Title 51 RCW by the AAA Provider Contractor or its employees under such laws and regulations.

e. Employees and Volunteers

Insurance required of the AAA Provider Contractor under the Contract shall include coverage for the acts and omissions of the AAA Provider Contractor's employees and volunteers. In addition, the AAA Provider Contracts shall ensure that all employees and volunteers who use vehicles to transport clients or deliver services have personal automobile insurance and current driver's licenses.

f. Separation of Insureds

All insurance policies shall include coverage for cross liability and contain a "Separation of Insureds" provision.

g. Insurers

The AAA contractor shall obtain insurance from insurance companies identified as an admitted insurer/carrier in the State of Washington, with a current Best's Reports' rating of A-, Class VII, or better.

h. Evidence of Coverage

AAA General Terms and Conditions

The AAA Provider Contractor shall, upon request by AAA, submit a copy of the Certificate of Insurance, policy, and additional insured endorsement for each coverage required of the AAA Provider Contractor under this Contract. The Certificate of Insurance shall identify the AAA as the Certificate Holder. A duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Contract, shall execute each Certificate of Insurance.

The AAA Provider Contractor shall maintain copies of Certificate of Insurance, policies, and additional insured endorsements for each AAA Provider Contractor as evidence that each AAA Provider Contractor maintains insurance as required by the Contract.

i. **Material Changes**

The insurer shall give the AAA point of contact listed on page one of this Contract 45 days advance written notice of cancellation or non-renewal of any insurance policy required under this Contract. If cancellation is due to non-payment of premium, the insurer shall give the AAA ten (10) days advance written notice of cancellation. Failure to provide notice as required may result in termination of the Contract.

j. **Waiver of Subrogation**

AAA contractor waives all rights of subrogation against the AAA and DSHS for the recovery of damages are or would be covered by insurance required under the Contract. AAA contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies whether or not the AAA and DSHS receive the waiver of subrogation endorsement from the insurer.

k. **Coverage Limits**

By requiring insurance, the AAA does not represent that the coverage and limits required in this Contract will be adequate to protect the AAA Provider Contractor. Such coverage and limits shall not limit the AAA Provider Contractor's liability in excess of the required coverage and limits, and shall not limit the AAA Provider Contractor's liability under the indemnities and reimbursements granted to the AAA, the State, and DSHS in this Contract.

l. **Primary Coverage**

All AAA Provider Contractor's insurance provided in compliance with this Contract shall be primary and shall not seek contribution from insurance or self-insurance programs afforded to or maintained by the AAA. Insurance or self-insurance programs afforded to or maintained by the AAA shall be in excess of, and shall not contribute with, insurance required of the AAA Provider Contractor and any AAA Provider Contractor's Contractor under this Contract.

m. **Waiver**

The AAA contractor waives all rights, claims, and causes of action against the AAA, the State of Washington, and DSHS for the recovery of damages to the extent said damages are covered by insurance maintained by AAA Provider Contractor.

n. **Liability Cap**

Any limitation of liability cap set forth in this Contract shall not preclude the AAA from claiming under any insurance maintained by the AAA contractor pursuant to this Contract, up to the policy limits.

AAA General Terms and Conditions

o. Business Automobile Liability Insurance

The AAA contractor shall maintain a Business Automobile Policy on all vehicles used to transport clients, including vehicles hired by the AAA contractor or owned by the AAA Provider Contractor's employees, volunteers or others, with the following minimum limits: \$1,000,000 per accident combined single limit. The AAA Provider Contractor's carrier shall provide the AAA with a waiver of subrogation or name the AAA as an additional insured.

p. Indemnification and Hold Harmless

- (1) The AAA Provider Contractor shall be responsible for and shall indemnify, defend, and hold the AAA and DSHS harmless from any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines, of whatsoever kind of nature, arising out of or relating to a) the AAA contractor's performance or failure to perform this Contract, or b) the acts or omissions of the AAA contractor.
- (2) The AAA contractor's duty to indemnify, defend, and hold the AAA and DSHS harmless from any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines shall include the AAA and DSHS' personnel-related costs, reasonable attorney's fees, court costs, and all related expenses.
- (3) The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees.
- (4) Nothing in this term shall be construed as a modification or limitation on the AAA contractor's obligation to procure insurance in accordance with this Contract or the scope of said insurance.

16. Insurance Required for AAA.

DSHS certifies that it is self-insured under the State's self-insurance liability program, as provided by RCW 4.92.130, and shall pay for losses for which it is found liable.

The AAA certifies, by checking the appropriate box below, initialing to the left of the box selected, and signing this Agreement, that:

_____ ☐ The contractor is self-insured or insured through a risk pool and shall pay for losses for which it is found liable and shall, prior to the execution of this Agreement by DSHS, provide proof of coverage to the effect to the DSHS contact on page one of this Agreement.; or

_____ ☐ The Contractor maintains the types and amounts of insurance identified below and shall, prior to the execution of this Agreement by DSHS, provide certificates of insurance to the effect to the DSHS contact on page one of this Agreement.

Commercial General Liability Insurance (CGL)—to include coverage of bodily injury, property damage, and contractual liability, with the following minimum limits: Each occurrence--\$2,000,000; General Aggregate--\$4,000,000. The policy shall include liability arising out of premises, injury, and liability assumed under an insured contract. The State of Washington, DSHS, its elected and appointed officials, agents, and employees, shall be named as additional insureds.

17. Maintenance of Records. During the term of this Agreement and for six (6) years following termination or expiration of this Agreement, both parties shall maintain records sufficient to:

- a. Document performance of all acts required by law, regulation, or this Agreement;

AAA General Terms and Conditions

- b. Demonstrate accounting procedures, practices, and records that sufficiently and properly document the AAA's invoices to DSHS and all expenditures made by the AAA to perform as required by this Agreement.

For the same period, the AAA shall maintain records sufficient to substantiate the AAA's statement of its organization's structure, tax status, capabilities, and performance.

- 18. **Medicaid Fraud Control Unit (MFCU).** As required by federal regulations, the Health Care Authority, the Department of Social and Health Services, and any contractors or subcontractors, shall promptly comply with all MFCU requests for records or information. Records and information includes, but is not limited to, records on micro-fiche, film, scanned or imaged documents, narratives, computer data, hard copy files, verbal information, or any other information the MFCU determines may be useful in carrying out its responsibilities.
- 19. **Order of Precedence.** In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence, in the following order, to:
 - a. Applicable federal CFR, CMS Waivers and Medicaid State Plan;
 - b. State of Washington statutes and regulations;
 - c. ALTSA Management Bulletins and policy manuals;
 - d. This Agreement; and
 - e. The AAA's Area Plan.
- 20. **Ownership of Client Assets.** The AAA shall ensure that any client for whom the AAA or Subcontractor is providing services under this Agreement shall have unrestricted access to the client's personal property. For purposes of this paragraph, client's personal property does not pertain to client records. The AAA or Subcontractor shall not interfere with the client's ownership, possession, or use of such property. Upon termination of this Agreement, the AAA or Subcontractor shall immediately release to the client and/or DSHS all of the client's personal property.
- 21. **Ownership of Material.** Material created by the AAA and paid for by DSHS as a part of this Agreement shall be owned by DSHS and shall be "work made for hire" as defined by Title 17 USCA, Section 101. This material includes, but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; and/or training materials. Material which the AAA uses to perform this Agreement but is not created for or paid for by DSHS is owned by the AAA and is not "work made for hire"; however, DSHS shall have a license of perpetual duration to use, modify, and distribute this material at no charge to DSHS, provided that such license shall be limited to the extent which the AAA has a right to grant such a license.
- 22. **Ownership of Real Property, Equipment and Supplies Purchased by the AAA.** Title to all property, equipment and supplies purchased by the AAA with funds from this Agreement shall vest in the AAA. When real property, or equipment with a per unit fair market value over \$5000, is no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the AAA shall request disposition instructions from DSHS. If the per unit fair market value of equipment is under \$5000, the AAA may retain, sell, or dispose of it with no further obligation. Proceeds from the sale or lease of property that was purchased with revenue accrued under the Case Management/Nursing Services unit rate must be expended in Medicaid TXIX or Aging Network programs.

AAA General Terms and Conditions

When supplies with a total aggregate fair market value over \$5000 are no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the AAA shall request disposition instructions from DSHS. If the total aggregate fair market value of equipment is under \$5000, the AAA may retain, sell, or dispose of it with no further obligation.

Disposition and maintenance of property shall be in accordance with 45 CFR Parts 92 and 74.

- 23. Ownership of Real Property, Equipment and Supplies Purchased by DSHS.** Title to property, equipment and supplies purchased by DSHS and provided to the AAA to carry out the activities of this Agreement shall remain with DSHS. When real property, equipment or supplies are no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the AAA shall request disposition instructions from DSHS.

Disposition and maintenance of property shall be in accordance with 45 CFR Parts 92 and 74.

- 24. Responsibility.** Each party to this Agreement shall be responsible for the negligence of its officers, employees, and agents in the performance of this Agreement. No party to this Agreement shall be responsible for the acts and/or omissions of entities or individuals not party to this Agreement. DSHS and the AAA shall cooperate in the defense of tort lawsuits, when possible. Both parties agree and understand that this provision may not be feasible in all circumstances. DSHS and the AAA agree to notify the attorneys of record in any tort lawsuit where both are parties if either DSHS or the AAA enters into settlement negotiations. It is understood that the notice shall occur prior to any negotiations, or as soon as possible, and the notice may be either written or oral.

- 25. Restrictions Against Lobbying.** The AAA certifies to the best of its knowledge and belief that no federal appropriated funds have been paid or will be paid, by or on behalf of the AAA, to any person for influencing or attempting to influence an officer or employee of a federal agency, a Member of Congress in connection with 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.

If any funds other than federal appropriated funds have or will be paid for the purposes stated above, the AAA must file a disclosure form in accordance with 45 CFR Section 93.110.

The AAA shall include a clause in all subcontracts restricting subcontractors from lobbying in accordance with this section and requiring subcontractors to certify and disclose accordingly.

- 26. Severability.** The provisions of this Agreement are severable. If any court holds any provision of this Agreement, including any provision of any document incorporated by reference, invalid, that invalidity shall not affect the other provisions this Agreement.

- 27. Subcontracting.**

- a. The AAA may, without further notice to DSHS; subcontract for those services specifically defined in the Area Plan submitted to and approved by DSHS, except subcontracts with for-profit entities must have prior DSHS approval.
- b. The AAA must obtain prior written approval from DSHS to subcontract for services not specifically defined in the approved Area Plan.
- c. Any subcontracts shall be in writing and the AAA shall be responsible to ensure that all terms, conditions, assurances and certifications set forth in this Agreement are included in any and all

AAA General Terms and Conditions

client services Subcontracts unless an exception to including a particular term or terms has been approved in advance by DSHS.

- d. Subcontractors are prohibited from subcontracting for direct client services without the prior written approval from the AAA.
- e. When the nature of the service the subcontractor is to provide requires a certification, license or approval, the AAA may only subcontract with such contractors that have and agree to maintain the appropriate license, certification or accrediting requirements/standards.
- f. In any contract or subcontract awarded to or by the AAA in which the authority to determine service recipient eligibility is delegated to the AAA or to a subcontractor, such contract or subcontract shall include a provision acceptable to DSHS that specifies how client eligibility will be determined and how service applicants and recipients will be informed of their right to a fair hearing in case of denial or termination of a service, or failure to act upon a request for services with reasonable promptness.
- g. If DSHS, the AAA, and a subcontractor of the AAA are found by a jury or trier of fact to be jointly and severally liable for damages rising from any act or omission from the contract, then DSHS shall be responsible for its proportionate share, and the AAA shall be responsible for its proportionate share. Should the subcontractor be unable to satisfy its joint and several liability, DSHS and the AAA shall share in the subcontractor's unsatisfied proportionate share in direct proportion to the respective percentage of their fault as found by the jury or trier of fact. Nothing in this term shall be construed as creating a right or remedy of any kind or nature in any person or party other than DSHS and the AAA. This term shall not apply in the event of a settlement by either DSHS or the AAA.
- h. Any subcontract shall designate subcontractor as AAA's Business Associate, as defined by HIPAA, and shall include provisions as required by HIPAA for Business Associate contract. AAA shall ensure that all client records and other PHI in possession of subcontractor are returned to AAA at the termination or expiration of the subcontract.

28. Subrecipients.

- a. General. If the AAA is a subrecipient of federal awards as defined by 2 CFR Part 200 and this Agreement, the AAA shall:
 - (1) Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;
 - (2) Maintain internal controls that provide reasonable assurance that the AAA is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;
 - (3) Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
 - (4) Incorporate 2 CFR Part 200, Subpart F audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;
 - (5) Comply with the applicable requirements of 2 CFR Part 200, including any future amendments to 2 CFR Part 200, and any successor or replacement Office of Management and Budget

AAA General Terms and Conditions

(OMB) Circular or regulation; and

(6) Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39. (Go to <https://ojp.gov/about/offices/ocr.htm> for additional information and access to the aforementioned Federal laws and regulations.)

- b. Single Audit Act Compliance. If the AAA is a subrecipient and expends \$750,000 or more in federal awards from all sources in any fiscal year, the AAA shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the AAA shall:
 - (1) Submit to the DSHS contact person the data collection form and reporting package specified in 2 CFR Part 200, Subpart F, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;
 - (2) Follow-up and develop corrective action for all audit findings; in accordance with 2 CFR Part 200, Subpart F; prepare a "Summary Schedule of Prior Audit Findings" reporting the status of all audit findings included in the prior audit's schedule of findings and questioned costs.
- c. Overpayments. If it is determined by DSHS, or during the course of the required audit, that the AAA has been paid unallowable costs under this Agreement, DSHS may require the AAA to reimburse DSHS in accordance with 2 CFR Part 200.
 - (1) For any identified overpayment involving a subcontract between the AAA and a tribe, DSHS agrees it will not seek reimbursement from the AAA, if the identified overpayment was not due to any failure by the AAA.

29. Survivability. The terms and conditions contained in this Agreement, which by their sense and context, are intended to survive the expiration of the particular agreement shall survive. Surviving terms include, but are not limited to: Confidentiality, Disputes, Inspection, Maintenance of Records, Ownership of Material, Responsibility, Termination for Default, Termination Procedure, and Title to Property.

30. Contract Renegotiation, Suspension, or Termination Due to Change in Funding. If the funds DSHS relied upon to establish this Contract or Program Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, after the effective date of this contract but prior to the normal completion of this Contract or Program Agreement:

- a. The Contract or Program Agreement may be renegotiated under the revised funding conditions.
- b. At DSHS's discretion, DSHS may give notice to the AAA to suspend performance when DSHS determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this contract.
 - (1) During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
 - (2) When DSHS determines that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written

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notice to DSHS informing DSHS whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.

- (3) If the AAA's proposed resumption date is not acceptable to DSHS and an acceptable date cannot be negotiated, DSHS may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.

- c. DSHS may immediately terminate this Contract by providing written notice to the AAA. The termination shall be effective on the date specified in the termination notice. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty shall accrue to DSHS in the event the termination option in this section is exercised.

31. Termination for Convenience. The Contracts Administrator may terminate this Agreement or any in whole or in part for convenience by giving the AAA at least thirty (30) calendar days' written notice. The AAA may terminate this Agreement for convenience by giving DSHS at least thirty (30) calendar days' written notice addressed to: Central Contract Services, PO Box 45811, Olympia, Washington 98504-5811.

32. Termination for Default.

- a. The Contracts Administrator may terminate this Agreement for default, in whole or in part, by written notice to the AAA, if DSHS has a reasonable basis to believe that the AAA has:

- (1) Failed to meet or maintain any requirement for contracting with DSHS;
- (2) Failed to perform under any provision of this Agreement;
- (3) Violated any law, regulation, rule, or ordinance applicable to this Agreement; and/or
- (4) Otherwise breached any provision or condition of this Agreement.

- b. Before the Contracts Administrator may terminate this Agreement for default, DSHS shall provide the AAA with written notice of the AAA's noncompliance with the agreement and provide the AAA a reasonable opportunity to correct the AAA's noncompliance. If the AAA does not correct the AAA's noncompliance within the period of time specified in the written notice of noncompliance, the Contracts Administrator may then terminate the agreement. The Contracts Administrator may terminate the agreement for default without such written notice and without opportunity for correction if DSHS has a reasonable basis to believe that a client's health or safety is in jeopardy.

- c. The AAA may terminate this Agreement for default, in whole or in part, by written notice to DSHS, if the AAA has a reasonable basis to believe that DSHS has:

- (1) Failed to meet or maintain any requirement for contracting with the AAA;
- (2) Failed to perform under any provision of this Agreement;
- (3) Violated any law, regulation, rule, or ordinance applicable to this Agreement; and/or
- (4) Otherwise breached any provision or condition of this Agreement.

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- d. Before the AAA may terminate this Agreement for default, the AAA shall provide DSHS with written notice of DSHS' noncompliance with the Agreement and provide DSHS a reasonable opportunity to correct DSHS' noncompliance. If DSHS does not correct DSHS' noncompliance within the period of time specified in the written notice of noncompliance, the AAA may then terminate the Agreement.

33. Termination Procedure. The following provisions apply in the event this Agreement is terminated:

- a. The AAA shall cease to perform any services required by this Agreement as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination which are related to the transfer of clients, distribution of property, and termination of services.
- b. The AAA shall promptly deliver to the DSHS contact person (or to his or her successor) listed on the first page this Agreement, all DSHS assets (property) in the AAA's possession, including any material created under this Agreement. Upon failure to return DSHS property within ten (10) working days of the Agreement termination, the AAA shall be charged with all reasonable costs of recovery, including transportation. The AAA shall take reasonable steps to protect and preserve any property of DSHS that is in the possession of the AAA pending return to DSHS.
- c. DSHS shall be liable for and shall pay for only those services authorized and provided through the effective date of termination. DSHS may pay an amount mutually agreed by the parties for partially completed work and services, if work products are useful to or usable by DSHS.
- d. If the Contracts Administrator terminates this Agreement for default, DSHS may withhold a sum from the final payment to the AAA that DSHS determines is necessary to protect DSHS against loss or additional liability. DSHS shall be entitled to all remedies available at law, in equity, or under this Agreement. If it is later determined that the AAA was not in default, or if the AAA terminated this Agreement for default, the AAA shall be entitled to all remedies available at law, in equity, or under this Agreement.

34. Treatment of Client Property. Unless otherwise provided in the applicable Agreement, the AAA shall ensure that any adult client receiving services from the AAA under this Agreement has unrestricted access to the client's personal property. The AAA shall not interfere with any adult client's ownership, possession, or use of the client's property. The AAA shall provide clients under age eighteen (18) with reasonable access to their personal property that is appropriate to the client's age, development, and needs. Upon termination or completion of this Agreement, the AAA shall promptly release to the client and/or the client's guardian or custodian all of the client's personal property. This section does not prohibit the AAA from implementing such lawful and reasonable policies, procedures and practices as the AAA deems necessary for safe, appropriate, and effective service delivery (for example, appropriately restricting clients' access to, or possession or use of, lawful or unlawful weapons and drugs).

35. Waiver. Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Agreement unless amended as set forth in Section 1, Amendment. Only the Contracts Administrator or designee has the authority to waive any term or condition of this Agreement on behalf of DSHS.

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1. Definitions.

- a. "AAA" or "Contractor" shall mean the Area Agency on Aging that is a party to this agreement, and includes the AAA's officers, directors, trustees, employees and/or agents unless otherwise stated in this Agreement. For purposes of this Agreement, the AAA or agent shall not be considered an employee of DSHS
- b. "Adult Day Services" means Adult Day Care and/or Adult Day Health and Respite as defined below
 - (1) Adult Day Care: Adult Day Care is a community-based program designed to meet the needs of adults with impairments through individualized goal specific plans of care. This type of structured, comprehensive, nonresidential program provides a variety of health, social, and related support services in a protective setting.
 - (2) Adult Day Health: Adult Day Health is a supervised nonresidential program providing skilled nursing and/or rehabilitative therapy services in addition to all services provided in an adult day care center. Adult day health services are only appropriate for adults with medical or disabling conditions that require the skilled intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of the client's authorizing practitioner.
 - (3) Respite: A short-term service that allows family caregivers a break from caregiving duties while the eligible beneficiary is cared for by an adult day care provider.
- c. "Agreement" means this Agreement, including all documents attached or incorporated by reference.
- d. "Dementia and Behavioral Supports" means an assessment by a mental health professional to determine causes, triggers, and purposes behind documented or identified behaviors such as wandering or aggression, and the development of a written strategy with recommendations for specific interactions designed to address identified behaviors.
- e. "Education and Consultation" means non-medical skills training for eligible beneficiaries and their paid and unpaid caregivers related to an eligible beneficiary's diagnoses and chronic health issues to support managing their activities of daily living, behavior, health, and wellness.
- f. "Environmental Modification" means alterations to a residence that accommodate an eligible beneficiary's disability and promote functional independence, health, welfare, and safety. Environmental modifications include, but are not limited to, installing grab bars, building ramps, widening doorways, and modification to bathrooms
- g. "Home Delivered Meals" means nutritionally balanced meals prepared and delivered to an eligible beneficiary's home. Home delivered meals includes, but is not limited to, box meals, prepackaged meals, and hot meals, and must be from a provider that meets the requirements of chapter [246-215 WAC](#).
- h. "Home Safety Evaluation" means an assessment of a home to identify and reduce potential hazards, to minimize or prevent injury, and improve accessibility in the home.
- i. "In-Home Personal Care" means assistance with activities of daily living and instrumental activities of daily living provided to a person in their own home.
 - (1) "Home Care Agency" means an in-home service agency licensed under Chapter 70.127 RCW that provides nonmedical personal care to individuals who are ill, disabled, aged, or vulnerable so they can remain in their residence.

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- j. "Professional Services (Skilled Nursing)": means a short-term intermittent treatment of a chronic condition, or the treatment of chronic, stable, long-term conditions where the treatment cannot be delegated or self-directed. Excluded from skilled nursing services are treatments for acute care due to acute injury or illness.
- k. "Personal Emergency Response Systems" or "PERS" means a service to secure help in an emergency through an electronic device programmed to signal a response center that is staffed by trained professionals who immediately summon help. Systems must be approved by the Federal Communications Commission and meet the Underwriters Laboratories solutions or Intertek Electronic Testing Laboratories standards for home health care signaling equipment. Personal emergency response systems are limited to basic systems, global positioning systems, medication reminders, and fall detections.
- l. "Services that assist paid and unpaid family members caring for eligible individuals"
 - (1) "Housework and Errands" are services supporting beneficiaries to remain in their own home by assisting with instrumental activities of daily living related to their health and safety.
 - (2) "Yardwork and snow removal" are services to allow safe egress and entry into the home, reduce potential fire danger, assist the beneficiary to comply with local city and county codes, or other local requirements, such as a Homeowner's Association, in order to remain in their choice of setting.
- m. "Transportation" means services that support the ability to travel to therapeutic activities that support mental health, physical health, or wellbeing, the grocery store, medical appointments, and social services. Services include, but are not limited to, trip or mileage reimbursement, bus passes, taxi scripts, bridge tolls, and ferry tickets.

- 2. **Purpose.** AAAs will carry out activities related to outreach, provider network development, and beneficiary services within their service areas to support implementation of the WA Cares Fund. These activities are intended to support program awareness, ensure adequate provider capacity, and facilitate access to services for beneficiaries.
- 3. **Statement of Work (SOW).** The AAA shall provide the services and staff and otherwise do all things necessary for or incidental to the performance of work, as set forth in the attached Exhibit A, Statement of Work.
- 4. **Consideration.** Total consideration payable to the AAA for satisfactory performance of the work under this Agreement shall not exceed **\$2,045,196.00**, including any and all expenses. AAA are funded in three categories (Outreach, Provider Network, and Beneficiary services). The maximum of each is attached herein Exhibit B, FY27 AAA Funding Model.
 - a. AAA will be reimbursed for costs directly associated with contract activities up to the maximum consideration.
 - b. Administrative expenditure is limited to 10% of the program year's funding. Total YTD expenditure can never exceed the contract budget amount.
 - c. Funding may be moved between categories (up to 25%) with written permission of DSHS. No amendment will be needed.
- 5. **Billing and Payment.**

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- a. Invoice System. The AAA shall submit monthly reimbursement requests using Exhibit C, State BARS Form. These forms can be accessed at <http://ALTSASweb.dshs.wa.gov/aaa/BF/Billing/>. Each reimbursement request must include supporting general ledger (GL) detail or other DSHS-approved supporting documentation sufficient to substantiate the expenditures billed on the reimbursement request. Properly completed reimbursement requests and supporting documentation shall be submitted to DSHS by the AAA for review and approval.
- b. Payment. AAAs will be reimbursed for costs directly associated with contract activities up to the maximum consideration. Refer to Exhibit B, AAA Funding Model for eligible activities and service dates. Activities are not eligible to bill until the 'service begin' date outlined in the document. Invoices are due 30 days after the calendar end, and final invoices are due 45 days after the contract period.
- c. AAAs are expected to meet all targets, reporting requirements, and deliverables identified in the Statement of Work (SOW). All required deliverables, including but not limited to quarterly reports, annual plans, and required data submissions, must be submitted in accordance with timelines established in the SOW and associated reporting tools. Reports and deliverables must be complete and meet SOW requirements to be accepted.
 - (1) Certain deliverables are due prior to or within the same reporting period as a monthly reimbursement request, as summarized in Appendix A of the SOW. If required deliverables are not submitted by the established due date, or are submitted but deemed incomplete, DSHS may delay or withhold processing of reimbursement requests until all required deliverables are submitted and accepted.
 - (2) DSHS will notify the AAA if a submitted report or deliverable is incomplete. The AAA shall have a reasonable opportunity to correct and resubmit the deliverable. Reimbursement processing may resume once all required deliverables are received and deemed complete.
 - (3) AAAs are responsible for ensuring that all submissions are accurate, complete, and submitted by established deadlines, and that all required data is entered into designated systems in a timely manner.

6. WA Cares Fund population assumptions.

- a. WA Cares estimates 25,000 new beneficiaries needing access to WA Cares Fund during FY27. Some of these beneficiaries will already have long-term care services and will convert to WA Cares as a new payment source. Others will be newly ill or injured and requiring long-term care for the first time.
- b. All beneficiaries who get access to full WA Cares benefit in FY27 will have worked at least 500 hours in the last three years. The majority will not be receiving Medicaid long-term care services nor be eligible for Medicaid immediately after exhausting WA Cares Fund benefits. It is projected that 70% to 80% of WA Cares Fund beneficiaries will receive services while living in their home. Some beneficiaries who were born before 1968 and have only worked one or two years at 500 hours per year will have access to a prorated benefit of \$3,650 or \$7,300, respectively.

7. Additional Requirements.

- a. HCLA will be developing rules, policies, training materials, and other requirements during this contract period which will support the success of AAAs in completing the deliverables within the contract. AAAs will engage with HCLA on policy development for provider registration and monitoring, change management and training, including ongoing communication strategies with

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potential providers.

- b. AAAs will be available for check-ins with HCLA staff monthly to discuss progress and challenges. Templates for milestones will be drafted by HCLA to include required fields in support of statewide analysis. AAAs will use training and communication materials developed by HCLA. Any materials developed by the AAA or revised by the AAA must be submitted to HCLA for approval.

- 8. Subcontracts and other Third-Party Agreements.** In accordance with 45 CFR 164.502(e)(1)(ii), 164.504(e)(1)(i), and 164.308(b)(2), Business Associate shall ensure that any agents, Subcontractors, independent contractors or other third parties that create, receive, maintain, or transmit PHI on Business Associate's behalf, enter into a written contract that contains the same terms, restrictions, requirements, and conditions as the HIPAA compliance provisions in this Contract with respect to such PHI. The same provisions must also be included in any contracts by a Business Associate's Subcontractor with its own business associates as required by 45 CFR 164.314(a)(2)(b) and 164.504(e)(5).

9. Conflict of Interest:

- a. The AAAs shall implement enhanced contract monitoring practices to ensure compliance with conflict-of-interest standards. Specifically, AAAs must ensure that their staff and programs do not solely or disproportionately refer clients to services provided by their own agency. All referrals must support beneficiary choice principles, allowing individuals to make informed decisions from the full range of qualified providers available.
- b. AAAs must also maintain and document internal safeguards that prevent real or perceived conflicts of interest, including but not limited to: separation of duties, transparent referral processes and routine audits or reviews. These measures must be monitored regularly and reported to WA Cares Fund to ensure the integrity of service delivery and protect beneficiary autonomy.

10. Performance and Compliance Actions:

- a. To uphold the shared commitments to high-quality, accessible, and equitable service delivery, the AAA and the WA Cares Fund will work together to monitor progress toward meeting the contractual terms, financial requirements, reporting obligations, and performance targets outlined in the Statement of Work (SOW) agreement. Monitoring activities may include review of reimbursement requests, supporting financial documentation, internal controls, deliverables, and other records related to contract performance and payment. These steps are designed to foster mutual accountability, continuous improvement, and effective partnership in support of the program's mission. AAAs that do not fulfill the requirements of the contract may be subject to the following contract actions.
 - (1) First Notification: WA Cares Fund will provide a formal notice outlining areas of concern. The AAA will develop and submit a correction action plan within an agreed-upon timeframe, with support from WA Cares as needed.
 - (2) Second Notification: If challenges persist, a second notice will be issued, and WA Cares Fund will work with the AAA to revise and strengthen the corrective action plan. This may include enhanced support and increased check-ins to guide progress.
 - (3) Third Notification: Continued difficulty in meeting agreed-upon obligations may result in a contract termination and a reassignment of the scope of work to another qualified entity. WA Cares Fund reserves the right to terminate and reallocate associated funding in order to reassign the scope of work.

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11. **State or Federal Audit Requests.** The Contractor is required to respond to State or Federal audit requests for records or documentation, within the timeframe provided by the requestor. The Contractor must provide all records requested to either State or Federal agency staff or their designees.
12. **Confidentiality.** In addition to General Terms and Conditions Confidentiality language, the AAA or its Subcontractors may disclose information to each other, to DSHS, or to appropriate authorities, for purposes directly connected with the services provided to the client. This includes, but is not limited to, determining eligibility, providing services, and participation in disputes, fair hearings or audits. The AAA and its Subcontractors shall disclose information for research, statistical, monitoring and evaluation purposes conducted by appropriate federal agencies.
13. **Systems and Tools.**
 - a. To ensure consistent data collection, reporting, and program administration, the following systems and tools shall be used to perform activities and submit required data.
 - b. These systems serve as the official systems of record for the functions described throughout the SOW. AAAs are responsible for ensuring that staff are trained in their use and that all required data is entered in a timely, complete, and accurate manner.

System/Tool	Purpose	Required Use
PAMS (Provider Application and Management System)	Application processing, including qualification verification, risk assessment, contract facilitation and tracking, registration, and communication tracking.	AAAs shall use PAMS to track provider application progress and maintain accurate provider registration data
Provider Capacity Smartsheet Dashboard	Centralized tool for collecting and monitoring provider capacity data across regions	AAAs shall enter and maintain up-to-date provider capacity data, including service type, geographic coverage, and estimated capacity. This is the official system of record for provider capacity reporting.
Salesforce AAA Console	The AAA Console is a Cloud-based Customer Relationship Management (CRM) and Service Management System that help manage WA Cares Fund relationships efficiently.	AAAs shall document all beneficiary intake activities and service interactions in the Salesforce AAA Console in accordance with DSHS workflows and timelines.
GetCare Assessment Tool	Tool used to complete functional eligibility assessments and document assessment outcomes	AAAs shall complete and document all eligibility assessments using GetCare, in alignment with program policy and training requirements
Provider Capacity and Leads Form	Tool used to collect provider lead information, service offerings, geographic coverage, and estimated provider capacity for organizations interested in participating in the provider network.	AAAs shall use the WA Cares Provider Capacity and Leads Form to support provider network development activities, including assisting existing and prospective

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		providers in submitting provider lead and projected capacity information in accordance with WA Cares guidance.
Q&A Log	Channel for submitting provider network or beneficiary policy, operational, and system related questions to WA Cares	AAAs shall use the Q&A Log to submit questions, track and review responses, and ensure consistent interpretation of program requirements

Exhibit A, Statement of Work

1. **Purpose.** The purpose of this contract is to define the roles, responsibilities, and expectations of Area Agencies on Aging (AAAs) in supporting implementation of the WA Cares Fund (WCF) program for FY27.
2. **Statement of Work (SOW).** AAAs are responsible for carrying out activities related to outreach, provider network development, and beneficiary services within their service areas. These activities are intended to support program awareness, ensure adequate provider capacity, and facilitate access to services for beneficiaries.

The Statement of Work establishes required deliverables, reporting expectations, and performance standards to ensure consistent implementation. AAAs are expected to perform all activities in accordance with program guidance, timelines, and system requirements outlined below.

a. Outreach-Full Benefits Launch.

- (1) AAAs shall develop and implement an annual public outreach plan to inform key audiences about WA Cares and drive benefit applications from potentially eligible beneficiaries. AAAs will provide target metrics in their plans and submit monthly reports on their progress. AAAs must submit draft plans to WA Cares by July 31, 2026. AAAs may request changes to their plans and metrics later in the year if needed.
- (2) AAAs may begin routine activities such as outreach to local organizations, giving presentations and attending local events before their annual plans are finalized. AAAs must not begin any advertising or outreach to local news media until their annual plans are approved by WA Cares. AAAs may request early review of their annual plan in order to begin these activities sooner.
- (3) Each AAA must identify at least one outreach lead who will serve as a point of contact for their outreach activities. Outreach leads will complete required training and attend regular outreach meetings.
- (4) AAAs may develop tailored outreach materials. Some AAA-created materials will require WA Cares review, as identified in guidelines provided by WA Cares.

b. Provider Services-Full Benefits Launch.

- (1) Beginning July 1, 2026, WA Cares Fund (WCF) will operate in a full benefits environment statewide. Area Agencies on Aging (AAAs) shall continue to support the development, expansion, and ongoing oversight of the WCF provider network to ensure sufficient capacity, geographic coverage, and access to services for eligible beneficiaries.
- (2) This SOW establishes expectations for AAAs to maintain and strengthen the provider network through policy and procedure collaboration, provider capacity assessment and monitoring, provider recruitment, provider application and contracting support. Activities under this section are intended to support a sustainable, equitable, and responsive provider network.
- (3) WCF will continue to rely on provider capacity targets previously established and anticipated for statewide implementation. AAAs shall use the existing capacity targets to guide ongoing network monitoring, gap identification, and recruitment strategies. AAA shall maintain and monitor an appropriate and adequate Network sufficient to provide adequate access to all services covered under WCF. This includes monitoring provider participation and identifying providers who may deregister, reduce capacity, or discontinue services.

(4) Service Description

- (a) AAAs shall support the WCF provider network using the list of approved services and definitions identified in WA Cares ApprovedServices-SupportsProviders PDF. Provider network activities shall align with WCF policies, legislative intent, and program guidance issued by DSHS. AAAs serve as regional partners supporting provider engagement, network capacity visibility, and targeted recruitment to address service, geographic, and population-based gaps.

(5) Policy & Procedure Collaboration:

- (a) AAAs shall collaborate with WCF to support the ongoing development, refinement, and implementation of provider network policies and procedures. This includes providing operational feedback to inform WCF policy and procedure updates, supporting consistent interpretation and implementation of provider network policies at a regional level, and ensuring policies promote equity, quality, and access across diverse communities and service areas. AAAs shall clarify and align AAA internal procedures when referenced or required within WCF policies and procedures. AAAs are not responsible for independently developing WCF policy but shall support alignment and implementation as directed.

(6) Provider Capacity assessment and monitoring:

- (a) AAAs shall maintain as appropriate an adequate Provider network. AAAs shall conduct ongoing provider capacity assessment and monitoring to support network sufficiency during full benefit implementation. AAAs shall collect and maintain capacity estimates from existing and prospective providers using Exhibit D, WCF AAA Provider Targets-SYF27 document and Exhibit E, AAA Provider Capacity Smartsheet Dashboard. AAAs shall support providers using the Provider Leads Form to project anticipated capacity for WCF beneficiaries. Capacity estimates must account for providers' ability to serve both Medicaid and WCF beneficiaries in accordance with WCF guidance.
- (b) Timely and accurate data entry is critical to support statewide oversight and to ensure WCF maintains clean, exportable data for monitoring, evaluation, forecasting, and legislative reporting.
- (c) AAAs will maintain up-to-date capacity data and conduct county-by-county analysis to monitor geographic coverage and identify service gaps, recognizing that some providers may serve limited-service areas within the AAA regions. To promote beneficiary choice and access, AAAs are expected to actively work toward two qualified providers for each service in every county where feasible.
- (d) AAAs will monitor provider participation and network stability, including identifying providers who deregister, discontinue services, reduce capacity, or change service areas. AAAs will support network resiliency by identifying replacement capacity needs and implementing recruitment priorities to maintain adequate provider coverage across all regions.

(7) Provider recruitment and Network Expansion:

- (a) AAAs shall maintain an open and continuous provider contracting process. AAAs may not suspend or close provider applications based on perceived network sufficiency or current capacity levels. Recruitment should prioritize high-need services and should be coordinated and aligned with statewide provider network development priorities. AAAs will support targeted provider recruitment to address identified service or geographic gaps in the

provider network. AAA should conduct proactive recruitment activities to address identified geographic, service, cultural, or capacity gaps to ensure adequate provider network coverage. Recruitment activities should be prioritized to expand provider availability where gaps exist, and targeted recruitment strategies informed by capacity data, utilization trends, and beneficiary needs.

(8) Provider Application and Contracting Support:

- (a) AAAs shall guide and assist providers through the WCF application and contracting process. This includes supporting providers in understanding eligibility requirements and documentation needs, facilitating timely completion of application and contracting steps, and aligning contracting support with identified network capacity needs and recruitment priorities. AAAs should document newly registered providers and associated capacity in the AAA provider capacity Smartsheet dashboard at least monthly. AAAs do not execute (register) contracts on behalf of WCF but provide facilitative and coordination support as directed.

(9) Capacity Monitoring and Network Performance:

- (a) AAAs shall support ongoing tracking of the provider network capacity and performance indicators using DSHS approved tools, reports and monthly check-in calls with Provider Network Program Manager. AAA shall communicate identified risks, gaps, or emerging trends to WCF in accordance with established communication pathways and use monitoring findings to inform recruitment and network planning activities.
- (b) AAAs shall monitor provider network capacity on an ongoing basis to ensure timely access to services. Monitoring shall be conducted at the PSA level, with the ability to analyze and respond to county-level service gaps.

(10) Deliverables and Reporting: *Standardized reporting forms and tools will be provided by DSHS/WA Cares Fund* Quarterly reports are due the last day of the month following the close of the quarter (October 31, 2026; January, 31, 2027; April, 30, 2027; July 31, 2027) and will include:

- (a) Provider recruitment and network support summary: A high-level summary of recruitment activities for each service, gaps addressed, and emerging risks, including provider deregistration trends. Include analysis of county-level gaps in services (for example those do not have at least 2 providers of each service) and a prioritized plan for addressing gaps as feasible at the local level, or what assistance may be needed on a regional or statewide level to fill provider service gaps.
- (b) Provider capacity and access metrics: AAAs shall report, by service type, on provider capacity, beneficiary access, utilization, and indicators of unmet demand, where known and available.

(11) Ongoing reporting:

- (a) The AAA will utilize the PAMS system to maintain accurate and timely provider registration data. The AAA will use the Provider Capacity Data report Smartsheet as well as additional reporting tools provided by the department to assist AAAs to keep provider capacity data up to date as providers are registered and as capacity shifts.

(12) Performance Expectations:

- (a) AAAs shall deliver provider network support services in a timely, accurate and collaborative manner as described in WCF Policy and Procedure and shall maintain complete and accurate documentation in DSHS designated systems. AAAs shall demonstrate active engagement in addressing provider network gaps and shall support provider participation in WCF in a manner that promotes equitable access and beneficiary choice.
- (b) AAAs shall maintain accurate and timely provider capacity data to support statewide reporting, data exports, and ongoing network monitoring, including identification of providers who deregister or reduce service availability. AAAs shall cooperate with monitoring, technical assistance, and quality improvement activities conducted by WCF.

(13) Compliance:

- (a) AAAs shall comply with all applicable administrative rules, contract requirements, and WCF P&P related to provider network service delivery.

c. Beneficiary Services-Full Benefits Launch.

- (1) Beginning July 1, 2026, the WA Cares Fund (WCF) will transition to full benefits availability for eligible beneficiaries statewide. Area Agencies on Aging (AAAs) shall provide direct, community-based beneficiary services in support of full program implementation.
- (2) For purposes of program planning and service delivery, WCF assumes that up to one quarter (22%) of WCF applicants may require enhanced in-person assistance to successfully access benefits. This assumption is intended to inform service design and capacity planning and may be refined over time based on utilization data, operational experience, and beneficiary need. AAAs play a critical role in meeting their assumed level of need by providing individualized, in person support for applicants and beneficiaries who face barriers to accessing services through standard self-directed model.
- (3) The primary purpose is to define the AAA role in delivering beneficiary-facing services that support access to, understanding of, and navigation of WCF benefits. These services include application assistance, intake, eligibility assessments, suggested services support, and benefit navigation for eligible beneficiaries.
- (4) Direct beneficiary support is the primary focus of this work. Reporting and administrative requirements are limited to those necessary to ensure accountability, service quality, and program integrity.

(5) Service Description:

- (a) AAA shall deliver beneficiary services that support equitable, timely, and person-centered access to WA Cares Fund. Services must be delivered in alignment with legislative intent, applicable administrative rules, DSHS policies and procedures, and program guidance issues by DSHS. AAAs shall function as a trusted, community-based access point for beneficiaries who require in-person/enhanced support to successfully apply for, access and utilize the WCF benefit. Quality Assurance activities will begin in 2027. AAAs will participate in quality assurance reviews and complete performance improvement plans as required.

(6) Coordination and Collaboration:

- (a) AAAs shall coordinate closely with DSHS to ensure consistent beneficiary experience and effective service delivery. To prevent a duplication of funding and responsibilities, the AAA

shall ensure that subcontractors engaged to perform WA Cares beneficiary services are not being separately compensated for the same work as WA Cares Funding (i.e. the Community Assistance Network). Coordination responsibilities may include:

- i. Participation in required training and operational updates related to full benefits implementation.
- ii. Use of established escalation pathways and communication protocols (i.e. Q&A Log) for complex cases, policy clarification, or system issues.
- iii. Collaboration with Benefits & Customer Care (BCC) team to support timely referrals, warm handoffs, and resolution of beneficiary needs requiring enhanced navigation support.

(7) Required Services:

- (a) AAAs shall provide the following beneficiary services using DSHS-approved systems, tools, and processes.

(8) Program Education and Application Assistance:

- (a) Provide direct assistance to individuals seeking information and/or to apply for WCF benefits who require additional support.
- (b) Educate applicants on eligibility criteria, application requirements, and required documentation.
- (c) Assist applicants in completing and submitting applications.
- (d) Delivering services in a manner that promotes equitable access for diverse populations, including individuals with geographic barriers and other access challenges.

(9) Intake:

- (a) Conduct intake activities for applicants seeking to use their WCF benefit using the Salesforce-AAA console.
- (b) Gather required intake information and verify completeness prior to eligibility determination and assessment.
- (c) Coordinate intake activities in alignment with DSHS workflows, systems and timelines to support efficient progression through the eligibility process.

(10) Eligibility Assessment and Suggested Services:

- (a) Complete in-home eligibility assessments using the GetCare assessment tool, in accordance with DSHS policy and training.
- (b) Provide eligible beneficiaries with suggested services information based on assessment outcomes, benefit eligibility, and individual preferences.
- (c) Document all assessment activities, determinations, and suggested services using DSHS-designated systems in accordance with established standards and requirements.

(11) Eligibility Assessment and Suggested Services:

- (a) Complete in-home eligibility assessments using the GetCare assessment tool, in accordance with DSHS policy and training.
- (b) Provide eligible beneficiaries with suggested services information based on assessment outcomes, benefit eligibility, and individual preferences.
- (c) Document all assessment activities, determinations, and suggested services using DSHS-designated systems in accordance with established standards and requirements.

(12) Deliverables and Reporting. *Standardized reporting forms and tools will be provided by DSHS/WA Cares Fund* Quarterly reports are due on the last day of the month following the close of the quarter (October 31, 2026; January 31, 2027; April 30, 2027; July 31, 2027) and will summarize benefit navigation activities. At a minimum, the report must include:

- (a) Analysis of benefit navigation referrals.
 - i. Referral Volume and Source: Total number of benefit navigation referrals received during the reporting period. Indicate if the referral was received by the BCC or originated at the AAA.
 - ii. Reason for AAA involvement: Summary of the primary reasons individuals could not self-serve and required AAA assistance beyond what BCC could provide, including common barriers (e.g., need for in-person support, complexity of service coordination or challenges navigating systems or processes).
 - iii. Assistance Provided and Resolution Time: Description of the types of assistance provided to support individuals in utilizing their WCF benefit (e.g., provider selection, pre-authorization guidance, etc.), including average time to resolution.
 - iv. System Improvements and Enhanced support trends: Identification of any patterns, trends, or gaps in the processes, tools, or service delivery that may hinder an individual's ability to self-serve. Include recommendations for improving system efficiency and reducing avoidable escalations.
- (b) Overall Emerging trends in beneficiary services delivery:
 - i. Summary of key trends and patterns observed across the beneficiary experience (e.g., intake, application assessment, and general support), including common points where individuals encounter challenges. The AAA should identify any notable barriers impacting timely or successful progression through the process and provide recommendations for improving the beneficiary experience, including suggested actions for both AAA-level and DSHS-level improvements, as applicable.

(13) Ongoing reporting:

- (a) AAAs will use DSHS tools (e.g., Q&A Log) for logging questions, answers, and issue escalation processes. AAAs will participate in Quality Assurance monitoring including completing performance improvement plans as required.

(14) Performance Expectations:

- (a) Deliver services in a timely, accurate, and person-centered manner as described in WCF Policy and Procedure.
 - (b) Maintain complete and accurate documentation in DSHS designated systems.
 - (c) Meet response timeframes and quality standards established for beneficiary services as established in policy and procedures. AAA Supervisor will have access to reports within the AAA Console and GetCare to support staff performance and adhere to performance standards.
 - (d) Cooperate with monitoring, quality assurance, and technical assistance activities conducted by DSHS.
 - (e) Demonstrate the ability to provide enhanced support to beneficiaries who require additional support and cannot self-serve, consistent with the programs assumed service utilization levels. (This assumption is not a performance quota and shall not be used as an individual or organizational benchmark but may inform ongoing capacity planning and program evaluation).
- (15) Compliance:
- (a) AAAs shall comply with all applicable administrative rules, contract requirements, and WCF P&P related to beneficiary service delivery.

Exhibit B, FY27 AAA Funding Model

AAA	PSA	Outreach	Provider Network	Beneficiary Services	10% Admin	FY27 Total
Olympic	1	\$ 128,142	\$ 223,091	\$ 597,483	\$ 105,413	\$ 1,054,128
Northwest	2	\$ 151,654	\$ 318,044	\$ 851,787	\$ 146,832	\$ 1,468,316
Snohomish	3	\$ 184,401	\$ 450,294	\$ 1,205,981	\$ 204,520	\$ 2,045,196
King	4	\$ 413,457	\$ 1,375,325	\$ 3,683,404	\$ 608,021	\$ 6,080,206
Pierce	5	\$ 190,464	\$ 474,776	\$ 1,271,547	\$ 215,199	\$ 2,151,985
L/M/T	6	\$ 143,298	\$ 284,299	\$ 761,412	\$ 132,112	\$ 1,321,122
Southwest	7	\$ 170,211	\$ 392,987	\$ 1,052,501	\$ 179,522	\$ 1,795,221
Central	8	\$ 148,767	\$ 306,388	\$ 820,570	\$ 141,747	\$ 1,417,472
Southeast	9	\$ 186,807	\$ 460,009	\$ 1,231,999	\$ 208,757	\$ 2,087,573
Yakama Nation	10	\$ 83,283	\$ 41,931	\$ 112,300	\$ 26,390	\$ 263,905
Eastern	11	\$ 177,837	\$ 423,783	\$ 1,134,979	\$ 192,955	\$ 1,929,554
Colville Indian	12	\$ 77,665	\$ 19,243	\$ 51,537	\$ 16,494	\$ 164,939
Kitsap	13	\$ 108,515	\$ 143,828	\$ 385,201	\$ 70,838	\$ 708,381
FY27 Total		\$ 2,164,500	\$ 4,914,000	\$ 13,160,700	\$ 2,248,800	\$ 22,488,000

Exhibit C, Bars Form BARS Support Form

Effective 7/1/2026 - 6/30/27

AAA Name: _____

Contract #: _____

Title: WA CARES

Reporting Period: _____

	Budget Account Title	This Month	YTD	Contract Budget	Contract Balance
		Expenditures	Expenditures		
.11	WA Cares Administration (Limited to 10%)	\$0.00	\$0.00	\$0.00	\$0.00
.90	WA Cares Outreach	\$0.00	\$0.00	\$0.00	\$0.00
.90	WA Cares Provider Network Development	\$0.00	\$0.00	\$0.00	\$0.00
.90	WA Cares Beneficiary Services	\$0.00	\$0.00	\$0.00	\$0.00
	Total Admin	\$0.00	\$0.00	\$0.00	\$0.00
	Total Services	\$0.00	\$0.00	\$0.00	\$0.00
	Total All Elements	\$0.00	\$0.00	\$0.00	\$0.00

Vendor's Certificate. I hereby certify under penalty of perjury that the items and totals listed herein are proper charges for materials, merchandise or services furnished to the State of Washington and that all goods furnished and/or services rendered have been provided without discrimination on the grounds of race, creed, color, national origin, sex or age.

Certification for Federal Funds. By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Reimbursement Data	
Expenditures to Date	\$0.00
Revenue Previously Billed	\$0.00
Total Request	\$0.00

Approved by: _____

Prepared by: _____

Phone #: _____ Date: _____ Phone #: _____

Date: _____

Methods

Estimated WA Cares service demand is based on Medicaid and TSOA client experience and Milliman forecasts.

Estimates in Table 1 show total forecasted usage by service modality according to low (25,000) usage scenario. These counts represent annual unduplicated counts of beneficiaries ever using a service in SFY27, not monthly utilization.

Tables 2 and 3 indicate the share of estimated vested clients across PSAs and counties. These shares are used to determine PSA-level and county-level estimated usage on the following tabs (AAA Estimates - PSA and AAA Estimates - County).

Registered provider targets are calculated using estimated beneficiary projections and the target beneficiary to provider ratios. These ratios are calculated using data on median excess capacity across provider types.

1. SFY 2027 WA Cares Forecast

Forecast WA Cares Usage by Service Modality at Low/Medium Usage Scenarios

Scenario==>	
Annual Unduplicated Service Utilization	Forecast WA Cares Modality Share (SFY 2027)
Nursing facility	18.0%
Community Residential	15.0%
Adult Family Home	9.6%
Assisted Living	5.4%
Care transition coordination (Com Res Settings)	2.3%
In-Home	67.0%
Personal care	53.8%
Agency Provider	16.7%
Individual Provider	37.1%
Adult day care	0.5%
Adult day health	2.0%
Assistive technology	2.0%
Care transition coordination (In-Home Settings)	3.0%
Dementia and behavioral support	1.0%
Durable medical equipment	20.0%
Education and consultation	5.0%
Environmental modifications	5.0%
Home safety evaluations	3.0%
Housework, errands, yardwork, snow removal	5.0%
Home-delivered meals	20.0%
PERS	29.0%
Professional nursing (includes CR settings), of which (not mutually exclusive):	3.0%
Nurse Delegation	3.0%
Skilled Nursing	0.3%
Private Duty Nursing	0.3%
Transportation	2.0%
Unduplicated total	

25,000
LOW
4,500
2,400
1,350
563
4,167
9,276
125
500
500
750
250
5,000
1,250
1,250
750
1,250
5,000
7,256
750
750
75
75
500
25,000

2. ACS Estimates for Vested Clients by AAA with Tribal AAA Adjustment

AAA	Adjusted AAA Share
Southeast WA Aging and Long Term Care	8.03%
Aging & Adult Care of Central Washington	3.72%
Aging & Disability Services (King Co)	24.46%
Kitsap County Division of Aging & Long Term Care	2.33%
Pierce County Aging & Long Term Care	12.57%
Snohomish County Long Term Care and Aging Division	9.74%
Aging & Long Term Care of Eastern WA	12.26%
Lewis/Mason/Thurston AAA	8.20%
Northwest Washington AAA	4.68%
Southwest Washington AAA	9.54%
Olympic AAA	3.99%
Yakama Nation Area Agency on Aging	0.38%
Colville Indian Area Agency on Aging	0.11%
Statewide	100.0%

3. County Shares

County	Share
Adams	0.14%
Asotin	0.29%
Benton	2.52%
Chelan	1.18%
Clallam	1.44%
Clark	7.35%
Columbia	0.04%
Cowlitz	1.93%
Douglas	0.68%
Ferry	0.20%
Franklin	0.86%
Garfield	0.04%
Grant	1.04%
Grays Harbor	1.39%
Island	0.60%
Jefferson	0.58%
King	24.46%
Kitsap	2.33%
Kittitas	0.46%
Klickitat	0.20%
Lewis	1.08%
Lincoln	0.10%
Mason	1.35%
Okanogan	0.52%
Pacific	0.49%
Pend Oreille	0.30%
Pierce	12.57%
San Juan	0.10%
Skagit	0.66%
Skamania	0.10%
Snohomish	9.74%
Spokane	10.70%
Stevens	0.89%
Thurston	5.78%
Wahkiakum	0.06%
Walla Walla	0.70%
Whatcom	3.32%
Whitman	0.31%
Yakima	3.52%

WA Cares Fund:

Registration for Services and Supports Providers

RCW 50B.04.010(2) lists 19 approved services and supports to be included in the WA Cares Fund (WCF) benefit. Benefits will be available to eligible beneficiaries starting July 1, 2026.

While beneficiaries of WCF will not be Aging and Long-Term Support Administration (AL TSA) clients, DSHS is tasked with registering providers that meet specific minimum qualifications and operational standards [see **RCW 50B.04.020(3)(c)**]. Registration of qualified providers will include execution of a contract. As with client service contracts, contract execution for WA Cares will be managed by both AL TSA and local Area Agencies on Aging (AAAs).

Below is the agreed-upon division of contracting responsibilities¹:

DSHS/AL TSA

- Adaptive Equipment and Technology
- Adult Family Home, including Respite Care
- Assisted Living Facility, including Respite Care
- Care Transition Coordination Eligible Relative
- Financial Management Service (FMS)
- In-Home Personal Care (CDWA: Individual Providers), including Respite Care
- Memory Care
- Nursing Home, including Respite Care
- Professional Services (Nurse Delegation and Private Duty Nursing)

AAAs

- Adult Day services (Adult Day Care and Adult Day Health)
- Dementia Support (community-based)
- Education and Consultation
- Environmental Modification
- Home Delivered Meals (HDM)
- Home Safety Evaluation
- In-Home Personal Care (Home Care Agencies), including Respite Care
- Professional Services (Skilled Nursing)
- Services that Assist Paid and Unpaid Caregivers
- Transportation
- Personal Emergency Response System (PERS)

¹ If a provider chooses to serve the entire state rather than serving specific AAAs, AL TSA will hold the registration contract (e.g., HDM, PERS, and transportation)