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**FEDERAL BUREAU OF INVESTIGATION
TEXAS DEPARTMENT OF INSURANCE**

**EL PASO FIELD OFFICE HEALTH CARE FRAUD AND FINANCIAL CRIMES TASK
FORCE**

MEMORANDUM OF UNDERSTANDING

PARTIES

1. This Memorandum of Understanding (MOU) is entered into by and between the Federal Bureau of Investigation (FBI) and the Texas Department of Insurance (TDI). Nothing in this MOU should be construed as limiting or impeding the basic spirit of cooperation which exists between these agencies.

AUTHORITIES

2. Authority for the FBI to enter into this agreement can be found at Title 28, United States Code (U.S.C.), Section (§) 533; 42 U.S.C. § 3771; Title 28, Code of Federal Regulations (C.F.R.), § 0.85; and applicable United States Attorney General's Guidelines.

PURPOSE

3. The purpose of this MOU is to delineate the responsibilities of El Paso Field Office (EPFO) Health Care Fraud and Financial Crimes Task Force (EP HCF-FC TF) participants, formalize relationships between participating agencies for policy guidance, planning, training, public and media relations; and maximize inter-agency cooperation. This MOU is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law or otherwise by any third party against the parties, the United States, or the officers, employees, agents, or other associated personnel thereof.

MISSION

4. The mission of the EP HCF-FC TF is to identify, investigate, and prosecute those engaged in fraudulent activity and to reduce and deter HCF and FC related offenses in Texas counties within the geographic boundaries of the EPFO AOR. The goal of the task force is to combat HCF and FC in the EPFO AOR through the collaborative, combined efforts of federal and state law enforcement agencies to identify, target, disrupt, and dismantle criminal organizations and individuals who engage in HCF and FC schemes in the El Paso AOR. In addition, the EP HCF-FC TF will pursue asset forfeiture against those who perpetrate and/or benefit from financial fraud schemes. The EP HCF-FC

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TF will enhance the effectiveness of federal, state, and local law enforcement resources through a coordinated initiative that seeks the most effective investigative and prosecutorial strategies to combat HCF and financial fraud related crimes.

LOCATION AND PERSONNEL:

5. The EP HCF-FC TF will be based at the El Paso FBI Field Office located at 660 S. Mesa Hills, Suite 3000, El Paso, Texas 79912.
6. The EP HCF-FC TF will be affiliated with the Financial Crimes Squad (Squad 12), whose main priorities include investigating health care fraud, financial crimes (including but not limited to, frauds and swindles, corporate securities/commodities fraud, financial institution fraud, insurance fraud, intellectual property rights crimes) and money laundering within the FBI El Paso area of responsibility.
7. TDI personnel assigned to the EP HCF-FC TF will be detailed to the FBI from TDI, until such time as the FBI and TDI agree otherwise. Subject to the availability of resources and case load considerations, TDI will assign one TDI officer to the EP HCF-FC TF.

SUPERVISION AND CONTROL

A. Supervision

8. Overall management of the EP HCF-FC TF shall be the shared responsibility of the participating agency heads and/or their designees.
9. The Special Agent in Charge (SAC) of the El Paso Division shall designate one Supervisory Special Agent (EP HCF-FC TF Supervisor) to supervise the EP HCF-FC TF. The EP HCF-FC TF Supervisor may designate a Special Agent to serve as EP HCF-FC TF Coordinator. Either the EP HCF-FC TF Supervisor or the Task Force Coordinator shall oversee day-to-day operational and investigative matters pertaining to the EP HCF-FC TF. The SSA for the EP HCF-FC TF will report to the El Paso FBI Criminal Branch Assistant Special Agent in Charge (ASAC).
10. Responsibility for conduct, not under the direction of the SAC, ASAC, SSA, or TF Coordinator of each EP HCF-FC TF member, both personally and professionally, shall remain with the respective agency head and each agency shall be responsible for the actions of its respective employees. Conduct undertaken outside the scope of an individual's EP HCF-FC TF duties and assignments under this MOU shall not fall within the oversight responsibility of the EP HCF-FC TF Supervisor or Task Force Coordinator. As stated in paragraph 80, below, neither the United States nor the FBI shall be responsible for such conduct.
11. EP HCF-FC TF personnel will be subject to the laws, regulations, policies, and personnel rules applicable to those of his or her respective agencies. FBI employees will continue

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to adhere to the Bureau's ethical standards, including Department of Justice (DOJ)/FBI regulations relating to outside employment and prepublication review matters, and will remain subject to the Supplemental Standards of Ethical conduct for employees of the DOJ.

12. EP HCF-FC TF personnel will continue to report to their respective agency heads for non-investigative administrative matters not detailed in this MOU. Conduct undertaken outside the scope of an individual's EP HCF-FC TF duties and assignments under this MOU shall not fall within oversight responsibility of the FBI. As provided below, neither the United States nor the FBI shall be responsible for such conduct.
13. Continued assignment of personnel to the EP HCF-FC TF will be based on performance and at the discretion of each EP HCF-FC TF member's respective supervisor. The FBI SAC/ASAC/SSA will also retain discretion to remove any individual from the EP HCF-FC TF.

B. Case Assignments and Investigative Responsibilities

14. The FBI EP HCF-FC TF Supervisor will be responsible for opening, monitoring, directing, and closing EP HCF-FC TF investigations in accordance with existing FBI policy and the applicable United States Attorney General's Guidelines.
15. Assignments of cases to personnel will be based on, but not limited to, experience, training, performance, and relevant legal issues (e.g., issues related to *Garrity v. New Jersey*, 385 U.S. 493 (1967)), in addition to the discretion of the EP HCF-FC TF Supervisor.
16. For FBI administrative purposes, TDI cases will be entered into the relevant FBI computer system.
17. EP HCF-FC TF personnel will have equal responsibility for each case assigned. EP HCF-FC TF personnel will be responsible for complete investigation from predication to resolution.

C. Resource Control

18. The head of each participating agency shall retain control of resources dedicated by that agency to the EP HCF-FC TF, including personnel, as well as the continued dedication of those resources. The participating agency head or designee shall be kept fully apprised of all investigative developments by his or her subordinates.
19. This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds, but rather a basic statement of understanding between the Member Agencies of the methods for satisfying the mission described herein. Unless otherwise agreed herein or by express written agreement, each Member Agency shall bear its own costs in relation

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to this MOU. Expenditures by each Member Agency shall be subject to its budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies.

20. The FBI will provide EP HCF-FC TF personnel with work stations and all necessary access to FBI Space, including access to all FBI systems of record necessary to fulfill the mission described herein, with the level of access ultimately determined by the EP HCF-FC TF Supervisor in coordination with FBI El Paso's Chief Security Officer (CSO).

OPERATIONS**A. Investigative Exclusivity**

21. It is agreed that matters designated to be handled by the EP HCF-FC TF will not knowingly be subject to non-EP HCF-FC TF law enforcement efforts by any of the participating agencies. It is incumbent on each agency to make proper internal notification regarding the EP HCF-FC TF existence and areas of concern.
22. It is agreed that there is to be no unilateral action taken on the part of the FBI or any participating agency relating to EP HCF-FC TF investigations or areas of concern. All law enforcement actions will be coordinated and cooperatively carried out.
23. EP HCF-FC TF investigative leads outside of the geographic areas of responsibility for FBI El Paso Division will be communicated to other FBI offices for appropriate investigation.

B. Confidential Human Sources

24. The disclosure of FBI informants, or Confidential Human Sources (CHSs), to non-EP HCF-FC TF personnel will be limited to those situations where it is essential to the effective performance of the EP HCF-FC TF. These disclosures will be consistent with applicable FBI guidelines.
25. Non-FBI EP HCF-FC TF personnel may not make any further disclosure of the identity of an FBI CHS, including to other individuals assigned to the EP HCF-FC TF. No documents which identify, tend to identify, or may indirectly identify an FBI CHS may be released without prior FBI approval.
26. In those instances where a participating agency provides an informant or CHS, the FBI may, at the discretion of the SAC, become solely responsible for the CHS's continued development, operation, and compliance with necessary administrative procedures regarding operation and payment as set forth by the FBI.
27. The United States Attorney General's Guidelines and FBI policy and procedure for operating FBI CHSs (also known as Confidential Informants and Cooperating Witnesses

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(CWs)) shall apply to all FBI CHSs opened and operated in furtherance of EP HCF-FC TF investigations. Documentation of, and any payments made to, FBI CHSs shall be in accordance with FBI policy and procedure.

28. Operation, documentation, and payment of any CHS opened and operated in furtherance of an EP HCF-FC TF investigation must be in accordance with the United States Attorney General's Guidelines. Documentation of any CHSes opened and operated in furtherance of EP HCF-FC TF investigations shall be in accordance with FBI policy and procedures.

C. Reports and Records

29. All investigative reporting will be prepared in compliance with existing FBI policy and the EP HCF-FC TF investigative activity typically will be documented via an FBI report versus a TDI report. In order to avoid the creation of inconsistent investigative reports, separate TDI reports should not be separately created in order to document the same event or investigative activity already documented in an FBI FD-302. Subject to pertinent legal and/or policy restrictions, copies of pertinent documents created by each member of the EP HCF-FC TF will be made available for inclusion in the respective investigative agencies' files, as appropriate.
30. EP HCF-FC TF reports prepared in cases assigned to state, county, or local law enforcement participants will be maintained at the FBI El Paso Field Office; original documents will be maintained by the FBI.
31. Records and reports generated in EP HCF-FC TF cases which are opened and assigned by the FBI SSA with designated oversight for investigative and personnel matters will be maintained in the FBI investigative file for the EP HCF-FC TF.
32. EP HCF-FC TF investigative records maintained at the El Paso Field Office of the FBI will be available to all EP HCF-FC TF personnel, as well as their supervisory and command staff subject to pertinent legal, administrative and/or policy restrictions.
33. All evidence and original tape recordings (audio and video) acquired by the FBI during the course of the EP HCF-FC TF investigations will be maintained by the FBI. The FBI's rules and policies governing the submission, retrieval and chain of custody will be adhered to by EP HCF-FC TF personnel.
34. All EP HCF-FC TF investigative records will be maintained at an approved FBI location. Placement of all or part of said information into participating agency files rests with the discretion of supervisory personnel of the concerned agencies, subject to SSA approval.
35. Classified information and/or documents containing information that identifies or tends to identify an FBI CHS or cooperating witness shall not be placed in the files of participating agencies unless appropriate FBI policy has been satisfied.

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36. The Parties acknowledge that this MOU may provide EP HCF-FC TF personnel with access to information about U.S. persons which is protected by the Privacy Act of 1974 and/or Executive Order 12333. The Parties expressly agree that all such information will be handled lawfully pursuant to the provisions thereof. The Parties further agree that if this access to information by EP HCF-FC TF personnel requires a change in privacy compliance documents, those changes will be accomplished prior to access being granted.

D. Training Requirements

37. All EP HCF-FC TF personnel agree to participate in and fulfill periodic FBI training requirements, such as attending or participating in FBI courses related to the Domestic Investigations and Operations Guide (DIOG), Freedom of Information Act, Privacy Act, FBI Security matters, and any other required Virtual Academy training.

INFORMATION SHARING

38. No information possessed by the FBI, to include information derived from informal communications between EP HCF-FC TF personnel and FBI employees not assigned to the EP HCF-FC TF, may be disseminated by EP HCF-FC TF member to non-EP HCF-FC TF personnel without the permission of the EP HCF-FC TF members' designated FBI EP HCF-FC TF Supervisor. Such information also may not be disseminated unless it is in accordance with the applicable laws and internal regulations, procedures or agreements between the FBI and the participating agencies that would permit the participating agencies to receive that information directly. Likewise, EP HCF-FC TF personnel will not provide any participating agency information to the FBI that is not otherwise available to it unless authorized by appropriate participating agency officials.
39. The FBI and TDI agree that all information regarding EP HCF-FC TF investigative matters will be treated as sensitive information.

PROSECUTIONS

40. EP HCF-FC TF investigative procedures, whenever practicable, are to conform to the requirements which would allow for either federal or state prosecution.
41. A determination will be made on a case-by-case basis whether the prosecution of EP HCF-FC TF cases will be at the state or federal level. This determination will be based on the evidence obtained and a consideration of which level of prosecution would be of the greatest benefit to the overall objectives of the EP HCF-FC TF.
42. In the event that a state or local matter is developed that is outside the jurisdiction of the FBI or it is decided to prosecute a EP HCF-FC TF case at the state or local level, the FBI agrees to provide all relevant information to state and local authorities in accordance with all applicable legal limitations.

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43. In addition to their basic obligation to support prosecution efforts connected to EP HCF-FC TF investigations, both the FBI and TDI recognize their independent obligation to notify the assigned prosecutor of the existence of any exculpatory information or investigative reports in the possession of each agency.

A. Investigative Methods/Evidence

44. For cases assigned to an FBI Special Agent or in which FBI CHSs are utilized, the parties agree to conform to federal standards concerning evidence collection, processing, storage, and electronic surveillance. However, in situations where the investigation will be prosecuted in the State Court where statutory or common law of the state is more restrictive than the comparable federal law, the investigative methods employed by FBI case agents shall conform to the requirements of such statutory or common law pending a decision as to venue for prosecution.
45. In all cases assigned to state, county, or local law enforcement participants, the parties agree to utilize federal standards pertaining to evidence handling and electronic surveillance activities as outlined in the Domestic Investigations and Operations Guide to the greatest extent possible.
46. The use of other investigative methods (search warrants, interceptions of oral communications, etc.) and reporting procedures in connection therewith will be consistent with the policies and procedures of the FBI.

B. Undercover Operations

47. All EP HCF-FC TF undercover operations will be conducted and reviewed in accordance with FBI guidelines and the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations. All participating agencies may be requested to enter into an additional agreement if an employee of the participating agency is assigned duties which require the officer to act in an undercover capacity.

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USE OF LESS-THAN-LETHAL-DEVICES¹

48. The parent agency of each individual assigned to the EP HCF-FC TF will ensure that while the individual is participating in FBI-led task force operations in the capacity of a task force officer, task force member, or task force participant, the individual will carry only less-lethal devices that the parent agency has issued to the individual, and that the individual has been trained in accordance with the agency's policies and procedures.
49. The parent agency of each individual assigned to the EP HCF-FC TF will ensure that the agency's policies and procedures for use of any less-lethal device that will be carried by the task force officer, task force member, or task force participant are consistent with the DOJ policy statement on the Use of Less-Than-Lethal Devices.²

DEADLY FORCE AND SHOOTING INCIDENT POLICIES

50. EP HCF-FC TF personnel will follow their own agencies' policies concerning firearms discharge and use of deadly force.

DEPUTATIONS

51. The DIOG defines the difference between a Task Force Officer (TFO), Task Force Member (TFM), and Task Force Participant (see DIOG Sections 3.3.2.1, 3.3.2.2, and 3.3.2.3). In summary, a task force officer is a certified Federal, state, local, or tribal law enforcement officer who is authorized to carry a firearm, currently deputized under either Title 21 or Title 18 of the U.S.C., has been issued Federal law enforcement credentials, assigned to the supervision of an FBI led task force, has a security clearance recognized by the FBI that is currently active, and authorized to have access to FBI facilities. A funded, full-time task force officer may be eligible to receive overtime reimbursement and other investigative resource from the FBI. Full-time task force officers must be assigned

¹ Pursuant to Section VIII of the DOJ Less-Than-Lethal Devices Policy dated May 16, 2011, all state/local officers participating in joint task force operations must be made aware of and adhere to the policy and its limits on DOJ officers.

² Less-Lethal – When use of force is required, but deadly force may not be appropriate, law enforcement officers may employ less-lethal weapons to gain control of a subject. Less-lethal weapons are designated to induce a subject to submit or comply with directions. These weapons give law enforcement officers the ability to protect the safety of the officers, subjects, and the public by temporarily incapacitating subjects. While less-lethal weapons are intended to avoid serious harm or injury to a subject, significant injuries and death can occur from their use.

The term "less-than-lethal" is synonymous with "less-lethal", "non-deadly", and other terms referring to devices used in situations covered by the DOJ Policy on the Use of Less-Than-Lethal Devices. "Less-lethal" is the industry standard and the terminology the FBI has elected to utilize in reference to this policy.

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by their parent agencies to the task force on a full-time basis, meaning the majority of the official duty time is spent conducting task force investigations and assignments. As a result, a full-time task force officer must spend on average more than 30 hours per week conducting task force investigations and assignments. Full-time versus part-time task force officer directly impacts eligibility for overtime reimbursement and the assignment of a leased vehicle as detailed in both Vehicles and Salary/Overtime Compensation sections below. A part-time TFO typically is not authorized to receive FBI overtime reimbursement or a leased vehicle.

52. Local and state law enforcement personnel designated to the EP HCF-FC TF, subject to a limited background inquiry, may be sworn as federally deputized Special Deputy United States Marshals, with authority to investigate Title 18 violations (general criminal violations), with the FBI securing the required deputation authorization. These deputations should remain in effect throughout the tenure of each investigator's assignment to the EP HCF-FC TF or until the termination of the EP HCF-FC TF, whichever comes first.
53. As appropriate, the FBI will also deputize federal task force officers pursuant to Title 21 of the United States Code in cases in which they will be investigating, under FBI supervision, drug-related violations falling within the FBI's jurisdiction.
54. Any task force officer being deputized must agree to adhere to the requirements of Rule 6(e) of the Federal Rule of Criminal Procedure.
55. Deputized EP HCF-FC TF personnel will be subject to the rules and regulations pertaining to such deputation. Administrative and personnel policies imposed by the participating agencies will not be voided by deputation of their respective personnel.

VEHICLES

56. In furtherance of this MOU, employees of TDI may be permitted to drive FBI owned or leased vehicles for official EP HCF-FC TF business and only in accordance with applicable FBI rules and regulations, including those outlined in the FBI Government Vehicle Policy Directive (0430D) and the Government Vehicle Policy Implementation Guide (0430PG). No TDI personnel, however, may drive any FBI owned or leased vehicle unless deputized. The assignment of an FBI owned or leased vehicle to any TDI EP HCF-FC TF member will require the execution of a separate Vehicle Use Agreement.
57. The participating agencies agree that FBI vehicles will not be used to transport passengers unrelated to EP HCF-FC TF business.
58. The FBI and the United States will not be responsible for any tortious act or omission on the part of TDI and/or its employees or for any liability resulting from the use of an FBI owned or leased vehicle utilized by TDI or any other non-FBI EP HCF-FC TF member,

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except where liability may fall under the provisions of the Federal Tort Claims Act (FTCA), as discussed in the Liability Section herein below.

59. The FBI and the United States shall not be responsible for any civil liability arising from the use of an FBI owned or leased vehicle by TDI task force personnel while engaged in any conduct other than their official duties and assignments under this MOU.
60. To the extent permitted by applicable law, TDI agrees to hold harmless the FBI and the United States, for any claim for property damage or personal injury arising from any use of an FBI owned or leased vehicle by TDI EP HCF-FC TF personnel which is outside the scope of their official duties and assignments under this MOU.

SALARY/OVERTIME COMPENSATION

61. The FBI and TDI remain responsible for all personnel costs for their EP HCF-FC TF representatives, including salaries, overtime payments and fringe benefits consistent with their respective agency, except as described in paragraph 62 below.
62. Subject to funding availability and legislative authorization, the FBI will reimburse to TDI the cost of overtime worked by non-federal EP HCF-FC TF personnel assigned full-time to EP HCF-FC TF, provided overtime expenses were incurred as a result of EP HCF-FC TF-related duties, and subject to the provisions and limitations set forth in a separate Cost Reimbursement Agreement to be executed in conjunction with this MOU. A separate Cost Reimbursement Agreement must be executed between the FBI and TDI for full-time employee(s) assigned to EP HCF-FC TF, consistent with regulations and policy, prior to any reimbursement by the FBI. Otherwise, overtime shall be compensated in accordance with applicable TDI overtime provisions and shall be subject to the prior approval of appropriate personnel.

PROPERTY AND EQUIPMENT

63. Property utilized by the EP HCF-FC TF in connection with authorized investigations and/or operations and in the custody and control and used at the direction of the EP HCF-FC TF, will be maintained in accordance with the policies and procedures of the agency supplying the equipment. Property damaged or destroyed which was utilized by EP HCF-FC TF in connection with authorized investigations and/or operations and is in the custody and control and used at the direction of EP HCF-FC TF, will be the financial responsibility of the agency supplying said property.

FUNDING

64. This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds, but rather is a basic statement of the understanding between the parties hereto of the tasks and methods for performing the tasks described herein. Unless otherwise agreed in writing, each party shall bear its own costs in relation to this MOU. Expenditures by

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each party will be subject to its budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies. The parties expressly acknowledge that the above language in no way implies that Congress will appropriate funds for such expenditures.

FORFEITURES

65. The FBI shall be responsible for processing assets seized for federal forfeiture in conjunction with EP HCF-FC TF operations.
66. Asset forfeitures will be conducted in accordance with federal law, and the rules and regulations set forth by the FBI and DOJ. Forfeitures attributable to EP HCF-FC TF investigations may be equitably shared with the agencies participating in the EP HCF-FC TF.

DISPUTE RESOLUTION

67. In cases of overlapping jurisdiction, the participating agencies agree to work in concert to achieve the EP HCF-FC TF's objectives.
68. The participating agencies agree to attempt to resolve any disputes regarding jurisdiction, case assignments, workload, etc., at the field level first before referring the matter to executive management personnel for resolution.

MEDIA RELEASES

69. All media releases and statements will be mutually agreed upon and jointly handled according to FBI and participating agency guidelines.
70. Press releases will conform to DOJ Guidelines regarding press releases. No release will be issued without FBI final approval.

SELECTION TO EP HCF-FC TF AND SECURITY CLEARANCES

71. Unless presently serving as a member of an FBI task force and/or having already fulfilled all FBI security/background prerequisites, and if a TDI candidate for the EP HCF-FC TF will require a security clearance, he or she will be contacted by FBI security personnel to begin the background investigation process prior to the assigned start date.
72. If, for any reason, the FBI determines that a TDI candidate is not qualified or eligible to serve on the EP HCF-FC TF, the participating agency will be so advised, and a request will be made for another candidate.
73. Upon being selected, each candidate will receive a comprehensive briefing on FBI field office security policies and procedures. During the briefing, each candidate will execute

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non-disclosure agreements (SF-312 and FD-868), as may be necessary or required by the FBI.

74. When FBI space becomes available, before receiving unescorted access to FBI space identified as an open storage facility, EP HCF-FC TF personnel will be required to obtain and maintain a "Top Secret" security clearance. In addition, EP HCF-FC TF members will also be required to fully complete the SF-86 and the required fingerprint cards. EP HCF-FC TF personnel will not be allowed unescorted access to FBI space unless they have received a Top Secret security clearance.
75. Upon departure from the EP HCF-FC TF, each individual whose assignment to the EP HCF-FC TF is completed will be given a security debriefing and reminded of the provisions contained in the non-disclosure agreement to which he or she previously agreed.

LIABILITY

76. The participating agencies acknowledge that this MOU does not alter the applicable law governing civil liability, if any, arising from the conduct of personnel assigned to the EP HCF-FC TF.
77. The participating agency shall immediately notify the FBI of any civil, administrative, or criminal claim, complaint, discovery request, or other request for information of which the agency receives notice, concerning or arising from the conduct of personnel assigned to the EP HCF-FC TF or otherwise relating to the EP HCF-FC TF. The participating agency acknowledges that financial and civil liability, if any and in accordance with applicable law, for the acts and omissions of each employee detailed to the EP HCF-FC TF remains vested with his or her employing agency. In the event that a civil claim or complaint is brought against a state or local officer assigned to the EP HCF-FC TF, the officer may request legal representation and/or defense by DOJ, under the circumstances and pursuant to the statutes and regulations identified below.
78. For the limited purpose of defending against a civil claim arising from alleged negligent or wrongful conduct under common law under the FTCA, 28 U.S.C. § 1346(b), and §§ 2671-2680: An individual assigned to the EP HCF-FC TF who is named as a defendant in a civil action as a result of or in connection with the performance of his or her official duties and assignments pursuant to this MOU may request to be certified by the Attorney General or his designee as having acted within the scope of federal employment at the time of the incident giving rise to the suit. 28 U.S.C. § 2679(d)(2). Upon such certification, the individual will be considered an "employee" of the United States government for the limited purpose of defending the civil claim under the FTCA, and the claim will proceed against the United States as sole defendant. 28 U.S.C. § 2679(d)(2). Once an individual is certified as an employee of the United States for purposes of the FTCA, the United States is substituted for the employee as the sole defendant with respect to any tort claims. Decisions regarding certification of employment under the

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FTCA are made on a case-by-case basis, and the FBI cannot guarantee such certification to any EP HCF-FC TF personnel.

79. For the limited purpose of defending against a civil claim arising from an alleged violation of the U.S. Constitution pursuant to 42 U.S.C. § 1983 or *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971): An individual assigned to the EP HCF-FC TF who is named as a defendant in a civil action as a result of or in connection with the performance of his or her official duties and assignments pursuant to this MOU may request individual-capacity representation by DOJ to defend against the claims. 28 C.F.R. §§ 50.15, 50.16. Any such request for individual-capacity representation must be made in the form of a letter from the individual defendant to the U.S. Attorney General. The letter should be provided to Chief Division Counsel (CDC) for the FBI El Paso Division, who will then coordinate the request with the FBI Office of the General Counsel. In the event of an adverse judgment against the individual, he or she may request indemnification from DOJ. 28 C.F.R. § 50.15(c)(4). Requests for DOJ representation and indemnification are determined by DOJ on a case-by-case basis. The FBI cannot guarantee the United States will provide legal representation or indemnification to any EP HCF-FC TF personnel.
80. Liability for any conduct by EP HCF-FC TF personnel undertaken outside of the scope of their assigned duties and responsibilities under this MOU shall not be the responsibility of the FBI or the United States and shall be the sole responsibility of the respective employee and/or agency involved.

DURATION

81. The term of this MOU is for the duration of the EP HCF-FC TF's operations, contingent upon approval of necessary funding, but may be terminated at any time upon written mutual consent of the agency involved.
82. Any participating agency may withdraw from the EP HCF-FC TF at any time by written notification to the SSA with designated oversight for investigative and personnel matters or program manager of the EP HCF-FC TF at least 30 days prior to withdrawal.
83. Upon termination of this MOU, all equipment provided to the EP HCF-FC TF will be returned to the supplying agency/agencies. In addition, when an entity withdraws from the MOU, the entity will return equipment to the supplying agency/agencies. Similarly, remaining agencies will return to a withdrawing agency any unexpended equipment supplied by the withdrawing agency during any EP HCF-FC TF participation.

MODIFICATIONS

84. This agreement may be modified at any time by written consent of all involved agencies.


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Modifications to this MOU shall have no force and effect unless such modifications are reduced to writing and signed by an authorized representative of each participating agency.

SIGNATORIES



Jeffrey L. Coburn
Acting Special Agent in Charge
Federal Bureau of Investigation


4/30/2021
Date

DocuSigned by:


992EC93195584E0...
Nancy Clark
Chief of Staff
Texas Department of Insurance

4/20/2021

Date

DocuSigned by:


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Christopher Davis
Chief Investigator
Associate Commissioner
Texas Department of Insurance

4/20/2021

Date

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