



Kenton County School District | It's about ALL kids.

Issue Paper

DATE:

September 20, 2023

AGENDA ITEM (ACTION ITEM):

Consider/Approve a Wellness Service Agreement with The Kroger Co., also known as Kroger Health, and the Kenton County Board of Education to hold a flu vaccine clinic in each school for the 2023-24 school year.

APPLICABLE BOARD POLICY:

01.1 Legal Status of the Board

HISTORY/BACKGROUND:

The Kenton County Education Association has sponsored school site flu vaccine clinic events the past several years, however this year they decided not to host. A Kroger representative will work with school nurses and administrators to determine a date to bring Kroger staff into a school to hold a flu vaccine clinic for eligible staff. Kroger Health will submit all claims to the participant's applicable third-party payor. There are no additional associated fees.

FISCAL/BUDGETARY IMPACT:

\$0.00 for schools and district

RECOMMENDATION:

Approval of the Wellness Service Agreement with The Kroger Co., also known as Kroger Health, and the Kenton County Board of Education to hold a flu vaccine clinic in each school for the 2023-24 school year.

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CONTACT PERSON:

Paula Rust, Director of Health Services

Principal/Administrator

District Administrator

Superintendent

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.

Principal—complete, print, sign and send to your Director. Director—if approved, sign and put in the Superintendent's mailbox.

WELLNESS SERVICES AGREEMENT

THIS WELLNESS SERVICES AGREEMENT ("AGREEMENT"), is made and entered into as of the 2nd day of October, 2023 ("Effective Date") by and between The Kroger Co., on behalf of itself and its subsidiaries and its affiliates, with its principal place of business at 555 Race Street, Cincinnati, Ohio, 45202 ("KROGER HEALTH"), and Kenton County Board of Education ("CUSTOMER") having its principal place of business at 1055 Eaton Dr. Ft. Wright, KY 41017.

WITNESSETH

WHEREAS, CUSTOMER desires to make available Wellness Services to certain eligible individuals (hereinafter referred to as "PARTICIPANTS"); and

WHEREAS, KROGER HEALTH desires to provide the Wellness Services to PARTICIPANTS in accordance with, and subject to, the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and other good and valuable considerations, the receipt and sufficiency of which hereby are acknowledged, the parties hereby agree as follows:

1. DEFINITIONS

1.1 **"Wellness Services"** or **"Services"** means services set forth on Exhibit A and any additional exhibits, which are attached hereto and incorporated herein, provided by KROGER HEALTH through its Providers to PARTICIPANTS.

1.2 **"PARTICIPANTS"** means any individual identified by CUSTOMER as eligible to receive Services from KROGER HEALTH. CUSTOMER will provide KROGER HEALTH with adequate means to identify all eligible PARTICIPANTS pursuant to Section 3.4 Eligibility.

1.3 **"Provider"** means a Kroger pharmacist, or other qualified Kroger Health associate who administers the Services to PARTICIPANTS.

1.4 **"Voucher"** shall mean a paper or electronic form or code provided by KROGER HEALTH to CUSTOMER for distribution to Participants to enable their access and utilization of the Services set forth on Exhibit A.

2. RELATIONSHIP BETWEEN CUSTOMER AND KROGER HEALTH

2.1 **Independent Contractors.** The parties hereto are independent contractors. This Agreement shall not be construed or deemed to create an employer/employee, principal/agent or any relationship between CUSTOMER and KROGER HEALTH other than that of independent entities contracting with each other solely for the purpose of carrying out the terms and conditions of this Agreement. Neither party shall hold itself out as the partner, agent or employee of the other party nor make representations or warranties on behalf of the other party, except as otherwise expressly agreed to herein.

2.2 Use of Name. Neither party shall be entitled to use the other party's name or any of its registered, proprietary marks in any endorsements or advertising, except as otherwise expressly provided herein or with the express written consent of the other party.

2.3 Practice of KROGER HEALTH. The provision of Services by KROGER HEALTH shall be exclusively under the direction, control and supervision of KROGER HEALTH and KROGER HEALTH agrees to provide health care services to PARTICIPANTS in the same manner as provided to other patients and without regard to race, religion, gender, sexual orientation, color, national origin, age, source of payment, the type of benefit plan under which the PARTICIPANT has coverage, or physical or mental health status. CUSTOMER shall have no right or authority to interfere with or in any manner direct or control the provision of Services by KROGER HEALTH.

3. CUSTOMER RESPONSIBILITIES

3.1 Availability of Services. CUSTOMER will notify PARTICIPANTS of, when, and where Services are available from KROGER HEALTH. CUSTOMER will identify PARTICIPANTS eligible to receive Services and provide KROGER HEALTH with all the information required to enable KROGER HEALTH to fulfill its duties and obligations under this Agreement.

3.1(a) Substitutions. If products used to provide Services, such as vaccinations, are not available due to supply, KROGER HEALTH may substitute products as agreed upon in Exhibit A.

3.2 Representative. CUSTOMER will designate one or more appropriate representatives of CUSTOMER who will serve as a liaison to KROGER HEALTH and who will be available during normal business hours to respond to inquiries from KROGER HEALTH.

3.3 Publication to Participants. CUSTOMER agrees to inform Participants that the Services are available from KROGER HEALTH.

3.4 Eligibility (Choose all applicable).

☐ **VOUCHERS:** CUSTOMER shall provide adequate controls for the purpose of monitoring the eligibility of PARTICIPANTS. CUSTOMER will issue, or cause to be issued, vouchers provided by KROGER HEALTH to the CUSTOMER for PARTICIPANTS to receive Services under this Agreement according to the rate(s) set forth on Exhibit A. CUSTOMER agrees to the terms and criteria set forth in Exhibit named Additional Acknowledgements, Requirements and Terms and Conditions, Kroger Health Vouchers for In-Clinic Services, which is attached hereto and incorporated herein.

☒ **ON-SITE:** CUSTOMER shall provide adequate controls for the purpose of monitoring the eligibility of PARTICIPANTS. CUSTOMER shall have a designated person present at the Location(s), Date(s), and Time(s) set forth on Exhibit B to monitor and approve Participants to receive Services under this Agreement according to the rate(s) set forth on Exhibit A.

4. KROGER HEALTH RESPONSIBILITIES

- 4.1 **Professional Judgment.** KROGER HEALTH reserves the right of professional judgment in the provision or denial of any Services. Nothing herein shall be construed to require KROGER HEALTH to provide Services or other health care services if, in the clinicians or pharmacists professional judgment, such services should not be provided.
- 4.2 **Representative.** KROGER HEALTH will designate one or more appropriate representatives who will serve as a liaison to CUSTOMER and who will be available during normal business hours to respond to inquiries from CUSTOMER.
- 4.3 **Documentation.** KROGER HEALTH will document Services as required by law and in a manner sufficient for billing purposes.
- 4.4 **Services.** KROGER HEALTH will make the Services indicated in Exhibit A available to Participants subject to the terms of this Agreement.

5. PAYMENT

5.1 Payment Terms.

☐ **Direct Bill – Invoice.** CUSTOMER shall remit payment to KROGER HEALTH within thirty (30) days of CUSTOMER's receipt of invoice from KROGER HEALTH. CUSTOMER agrees to pay all applicable sales, use or service taxes imposed by any state tax authority on the Services or payments provided hereunder (except for taxes imposed on KROGER HEALTH's income). Any such tax due is in addition to the fees herein and will be listed separately on invoices. KROGER HEALTH agrees to accept as full payment the amounts set forth in Exhibit A for the Services. KROGER HEALTH will collect, in accordance with its usual collection practices, amounts due for services not covered by this Agreement and any applicable co-insurance or co-pay amounts.

Bill to CUSTOMER at: Kenton County Board of Education
Attn

☒ **Submit Claims- Third party payor.** KROGER HEALTH will submit claims to PARTICIPANT'S applicable third-party payor. KROGER HEALTH will submit claims to PARTICIPANT'S applicable third-party payor per the terms of the applicable benefit plans. There is no fee for billing the third-party payor. All billing is in good faith. PARTICIPANTS receiving Services through The Little Clinic, LLC may be subsequently billed for any unpaid portion of the Services that have been refused by Third party payor.

- 5.2 **Failure to Pay.** CUSTOMER shall be in default under this Agreement should CUSTOMER fail to pay, when due, any obligation owed to KROGER HEALTH. KROGER HEALTH reserves the right to assess fees, accelerate payment terms, make reports to credit agencies, terminate this Agreement, and/or restrict CUSTOMER access to the account at any time. CUSTOMER

agrees to pay any collection fees, including attorney's fees and court costs, incurred by KROGER HEALTH in the event CUSTOMER fails to pay, when due, all amounts owed by CUSTOMER. In addition to, and not in limitation of, any right or remedy hereunder, KROGER HEALTH shall have, at any time, the right to set off any obligation of CUSTOMER against indebtedness to KROGER HEALTH.

5.3 Disputed Charges. CUSTOMER agrees to notify KROGER HEALTH, in writing, within 30 days of the date of any claim containing disputed charges. Failure to notify KROGER HEALTH in writing within such 30-day time period signifies acceptance and responsibility for prompt payment in full of the amount of the account balance.

6. TERMS AND TERMINATION

6.1 Term of Agreement. The initial term of this Agreement shall begin on the Effective Date and end one year from the Effective Date ("Initial Term"). This Agreement may be renewed or extended at the election of the parties, if the parties agree in a signed writing to renew or extend the Agreement. Any renewal or extension of the Agreement shall specify the new term of the Agreement, the Services that must be provided by KROGER HEALTH, and whether the fees for the Services have been modified.

6.2 Termination for Default. If there is any material default by either party hereto in the performance of the terms and conditions of this Agreement, the non-defaulting party may terminate this Agreement if the defaulting party is provided with written notice of the default and fails to cure the default within fifteen (15) days of its receipt of such written notice.

6.3 Termination Without Cause. Either party may terminate this Agreement at any time without cause as of a date it specifies, by giving the other party at least thirty (30) days prior written notice of its intent to terminate, including the effective date of termination. Nothing in this Agreement shall be construed to limit either party's lawful remedies in the event of a material default of this Agreement.

6.4 Immediate Termination. This Agreement may be terminated immediately, upon written notice from either party, in the event of the passage of a law, promulgation of a regulation or an investigation by any regulatory body that would materially and adversely affect or prohibit this Agreement or the performance of either party with regard to the subject of this Agreement.

6.5 Effect of Termination. Upon the effective date of termination of this Agreement, KROGER HEALTH shall immediately cease performing any Services under this Agreement. CUSTOMER agrees to pay KROGER HEALTH the fees owing under this Agreement for all Services completed by the effective date of termination. Termination of this Agreement by a party shall be without prejudice to any other right or remedy of such party under this Agreement or applicable law.

7. RECORDS, DATA COLLECTION, CITATIONS AND RIGHT TO INSPECT RECORDS

7.1 Access to Books and Records. Subject to laws, rules, and regulations applicable to patient confidentiality, KROGER HEALTH shall permit CUSTOMER access, during regular business

hours and upon reasonable written notice, to inspect books and records directly relating to the Services provided hereunder. Such information shall specifically be limited to such records as necessary to permit CUSTOMER to audit PARTICIPANT charges.

7.2 KROGER HEALTH Information. CUSTOMER will not, except as required by applicable law or governmental order, release to any party without KROGER HEALTH'S consent, any information relating to KROGER HEALTH which CUSTOMER obtains as a result of, or incident to, the relationship described in this Agreement, provided such information is not publicly known or available or otherwise available to CUSTOMER on a non-confidential basis.

7.3 Confidentiality of Participants Information. The parties shall maintain the confidentiality of all records and information relating to a PARTICIPANT and only release such records and information in accordance with this Agreement or as required or permitted by applicable law or governmental order. Furthermore, KROGER HEALTH and CUSTOMER each agree to implement reasonable and appropriate administrative, technical and physical security measures to ensure the integrity and confidentiality of Protected Health Information, as defined in the Health Insurance Portability and Accountability Act (HIPAA), to the extent required by the regulations promulgated pursuant to the HIPAA as may be amended from time to time. Protected Health Information of PARTICIPANT will only be provided to CUSTOMER if the PARTICIPANTS specifically authorize release to CUSTOMER in writing.

8. MISCELLANEOUS

8.1 Compliance with Law. The parties hereto agree to comply with all federal, state, and local laws, orders and regulations that are applicable to the terms and conditions of, and their performance under, this Agreement. CUSTOMER represents and warrants that it is not currently excluded from participation under federal health care programs pursuant to 42 U.S.C. 1320a-7, is not currently the subject of any pending exclusion proceeding under that section, and has not been adjudicated or determined to have committed any action that would subject it to mandatory or permissive exclusion under that section for which such an exclusion has not been implemented. CUSTOMER shall notify KROGER HEALTH immediately of its receipt of notice of exclusion or proposed exclusion from federal health care programs under 42 U.S.C. 1320a-7, or of the date of any adjudication or determination that it has committed any action which would subject it to mandatory or permissive exclusion under that section.

8.2 Mutual Indemnification. Each party hereto shall indemnify and hold harmless the other party from and against any and all third-party actions, demands, judgments, any loss, damage, costs or liabilities (including related reasonable attorneys' fees and court costs) and suits to the extent such third-party claims arise out of the negligent, willful or reckless acts or omissions of the indemnifying party or their employees and contractors. If this Agreement is terminated, the rights and obligation of the parties regarding indemnification under this paragraph shall survive the termination of this Agreement regarding any liability for acts or omissions that occurred prior to the termination date.

8.3 Assignment. No assignment of rights or delegation of duties under this Agreement shall be made by either party, except to a subsidiary or affiliate of such party, without the express written

approval of the other party. Any attempt at assignment in violation of this Section shall be void. Such approval shall not be unreasonably withheld.

8.4 Force Majeure. The duties, obligations (except payment obligations), and liabilities hereunder of all parties to this Agreement are limited in the event of circumstances beyond their control, such as a major disaster, epidemic, war, complete or partial destruction of facilities, disability of a significant number of personnel, or significant labor dispute. In such an event, the parties hereto agree to use reasonable efforts under the circumstances to fulfill their duties and obligations under this Agreement.

8.5 Severability. If any provision or application of this Agreement shall be adjudicated to be void or invalid, then the remaining provisions or applications hereof not specifically so adjudicated to be void or invalid shall be performed and observed without reference to the provision or applications so adjudicated.

8.6 Effect of Severable Provision. In the event that a term or provision of this Agreement is rendered invalid or unenforceable or declared null and void, and its removal has the effect of materially altering the obligations of either CUSTOMER or KROGER HEALTH in such a manner as, in the reasonable judgment of the affected party, (i) will cause financial hardship to such party, or (ii) will cause such party to act in violation of its governing or organizational documents, the party so affected shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the other party.

8.7 Notices. All notices required to be given hereunder shall be made in writing and shall be deemed sufficiently given if delivered or mailed by first class registered or certified mail, return receipt requested, to CUSTOMER or KROGER HEALTH, at the address set forth below or at such addresses as may subsequently be provided in writing to the respective parties. The notice shall be effective on the date indicated on the return receipt:

To KROGER HEALTH:

The Kroger Co.-Kroger Health
Attn: Market Access Team
555 Race Street Cincinnati,
OH 45202

If to CUSTOMER:

Kenton County Board of Education
Attn: Paula Rust
1055 Eaton Dr.
Ft. Wright, KY 41015

8.8 Amendment. This Agreement or any part or section of it may be amended at any time during the term of the Agreement only by the mutual written consent of a duly authorized representative of CUSTOMER and KROGER HEALTH. Any other amendment or alteration of this Agreement without such written consent shall be considered null and void.

8.9 Headings. The heading of articles and sections contained in this Agreement are for reference purposes only and should not affect in any way the meaning or interpretation of this Agreement.

8.10 Governing Law. This Agreement shall be governed by the laws of the State of Ohio.

8.11 **No Referrals.** No provision of this Agreement is intended as an inducement or offer to give or receive anything of value, either directly or indirectly, for the referral of patients or for the arranging or furnishing of any item or service for which payment may be made by a federal or state health care program.

8.12 **Entire Agreement.** This Agreement, including the attached exhibits which are hereby incorporated, contains the entire understanding of the Parties, and there are no representations, warranties, covenants, or undertakings other than those expressly set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of this Agreement duly authorized by all necessary and appropriate corporate action to execute this Agreement.

KROGER HEALTH

By: _____

Print Name: _____

Title: _____

Date: _____

CUSTOMER

By: _____

Print Name: Paula Rust

Title: Director of Health Services

Date: October 3, 2023

EXHIBIT A
Kroger Health Wellness Services and Fees

Services Provided by:	<input type="checkbox"/> Kroger Pharmacy	<input type="checkbox"/> The Little Clinic
Service Location:	<input type="checkbox"/> In-Store/Voucher	<input checked="" type="checkbox"/> On-Site Clinic
Estimated Total Number of Participants:		
Start and End Date of Services:		

Service/Product	TLC CPT	Rx NDC	Fee
Flu Quad			\$ INS
Flu Blok /HD			\$ INS
			\$
			\$
			\$
			\$
			\$
			\$
			\$
Flu Vaccine given will be age specific and subsequent to availability along with the professional judgment of the pharmacist			\$
On-Site Clinic Administration Fee	-	-	\$ 0

Per Section 3.1(a) of this Agreement, Influenza (Flu) Vaccines will be administered based on supply available to KROGER HEALTH. Substitutions between Flu Vaccines are permissible.

EXHIBIT B
Additional Acknowledgements, Requirements, and Terms and Conditions
Kroger Health On-Site Services

1. On-Site Event Details

Site Name	Site Address	Event Date/Time	Est. # of Participants
see attached for the site contact	varries	TBD	TBD

- 2. On-Site Contact:** CUSTOMER designates the following on-site contact to approve PARTICIPANTS and assist with facilitation of the event described in Exhibit A, On-Site Services:

Site Name	Contact Name	Contact Phone	Contact Email
Kenton Co Board of Edu	Paula Rust	859-957-2640	paula.rust@kenton.kyschools.us

- 3. Facility Requirements:** For all on-site administration of services, CUSTOMER must provide adequate facilities to enable Kroger Health to reasonably provide the Services and ensure the safety and privacy of all people during the event. This may include a private room with a door, space to maintain social distancing, and mask requirements. A site visit may be requested prior to the event to ensure proper safety and privacy protocols are in place.
- 4. On-Site Minimum:** CUSTOMER shall provide KROGER HEALTH a PARTICIPANT head count and designation of Services from the list in Exhibit A. If KROGER HEALTH performs an on-site clinic at the CUSTOMER'S location for less than 500 PARTICIPANTS, an additional fee may apply as outlined in Exhibit A.
- 5. Vaccine Supply:**
- Vaccine Administered:** KROGER HEALTH will administer the vaccine available to KROGER HEALTH at the time of the event. Specific vaccine manufacturer and product may vary.
 - Vaccine Availability:** Postponement of a vaccination event is a reasonable solution if supply is interrupted. KROGER HEALTH and CUSTOMER will collaborate to reschedule in a reasonable amount of time. If vaccine is substantially delayed, CUSTOMER may choose to execute a 30-day notice of termination.
 - Vaccine Provided by CUSTOMER:** If CUSTOMER will supply all necessary vaccine and accompanying supplies necessary for KROGER HEALTH to administer the Vaccine Services. Prior to administration, CUSTOMER shall be responsible for handling and storing such vaccine and accompanying supplies in compliance with all manufacturer's instructions, any requirements of an applicable FDA Emergency Use Authorization, all applicable laws, rules and regulations, as well as any other requirement or guidance issued by an applicable governmental authority.

EXHIBIT C
Additional Acknowledgements, Requirements and Terms and Conditions
Kroger Health Vouchers for In-Clinic/In-Pharmacy Services

Vouchers may be generated by KROGER HEALTH.

KROGER HEALTH will provide the Vouchers to the CUSTOMER with limited personal information for PARTICIPANTS to receive Services as of the date the Voucher is provided. KROGER HEALTH will send Vouchers electronically to CUSTOMER after account is approved.

Distribution: The Vouchers will be distributed to PARTICIPANTS through CUSTOMER's internal channels.

Collection: For each PARTICIPANT, KROGER HEALTH will collect the Voucher and check personal ID to ensure eligibility prior to providing the Services. Redeemed Vouchers will not be returned to CUSTOMER.

Any person using the Voucher shall be deemed a PARTICIPANT under this Agreement and therefore CUSTOMER shall be responsible to abide by the Payment Terms set forth in Section 5.1 Payment Terms.

[Sample voucher on the next page]

KROGER HEALTH WELLNESS SERVICES VOUCHER

(Pharmacy Only)

Patient Instructions: This is a Voucher for you to receive Wellness Services with Kroger Pharmacy inside select Kroger Co. stores. Take this Voucher along with your photo ID to have your service administered.

Please visit www.kroger.com/health for locations and to schedule an appointment. Appointments preferred; walk-ins welcome for most services.

The charge for your Services will be billed to: **Kenton County Board of Education**

Participant Name:

Voucher Start Date:

Participant Date of Birth:

Voucher End Date:

This voucher is authorization to provide the customer, above, the approved service/products not in excess of the amounts specified below. This voucher has no cash value to the beneficiary and may only be redeemed for vaccines or Wellness Services. Any balance due in excess of the value of this voucher must be paid by the customer at the time of sale. This voucher may NOT be used in combination with any other third-party pharmacy discount program.

Authorized Services/Products:

-
-
-
-
-

Max Dollar amount that may be billed under this voucher \$

Participant Signature:

Date:

Participant/Customer Acknowledgement: My signature above indicates that I received the products/services authorized by this voucher. I certify that I provided proof of any applicable primary insurance. I understand that the entity identified above will be responsible for payment on my behalf. I also understand that a minimum amount of my health information may be disclosed as part of the billing process to the above entity.

BELOW IS FOR KROGER HEALTH USE ONLY

Customer must have this voucher along with photo-identification to be eligible. Claim will process with a zero copay. Retain voucher in store with signed consent form. Patients under the age of 18 must be accompanied by a legal guardian.

For Pharmacy Use:

Process the Authorized Services*/Products in EPRN using the below plan information:

Third-Party Plan Name: B2B 22-23 Vaccinations

Third-Party Plan Code: 4001851

Cardholder ID: DOB (MMDDYYYY)

Group:

*For Health Screenings: (1) Provide the patient with the Patient Take Away before leaving, (2) Enter all data elements into PCST, and (3) Once the patient is added in the system, attach a copy of the voucher to the health screening paperwork and file

Clinical Plan:



The Kroger Family of Pharmacies

