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## Policy:

- The Division will ensure contracts or other arrangements between the Division and its business associates, including academic institutions, will comply with the policies and procedures described herein.
- The Division, upon learning that a pattern of activity or practice of a business associate and/or academic institution constitutes a material breach or violation of the business associate's and/or academic institution's obligation under the contract or other arrangement, will take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful:
  - Terminate the contract or arrangement, if feasible; or
  - Report the problem to the federal Department of Health and Human Services if termination is not feasible.

# Purpose:

The Division may disclose protected health information (PHI) to a business associate and/or academic institution and may allow a business associate and/or academic institution to create or receive PHI on its behalf. However, the Division must ensure that proper safeguards are in place.

#### Procedures:

- I. The Division will establish written contracts or other written agreements or arrangements with business associates and/or academic institutions that specifically establish and assure compliance with policies and procedures for the permitted and required uses and disclosures of PHI.
- II. Written contracts or other written agreements or arrangements with business associates and/or academic institutions will include language, which authorizes termination of the contract if the Division determines the business associate, and/or academic institution, has violated a material term of the contract.
- III. Written contracts or agreements between the Division and business associates and/or academic institutions will provide that the business associate and/or academic institution will:
  - A. Not use or further disclose PHI other than as permitted or required by the contract or as required by law, or that would violate the requirements of the HIPAA Privacy and Security Rule;

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- Use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by its contract and to mitigate any harmful effect or improper use or disclosure;
- C. Promptly report to the Division any security incident or any use or disclosure of the information not provided for by its contract about which it becomes aware. This includes at a minimum, the rate and copy of the incident and actions taken by the business associate to prevent re-occurrence;
- D. Ensure any agents, including subcontractors, to whom it provides PHI received from or created or received by a business associate and/or academic institution on behalf of the Division, agrees to the same restrictions and conditions that apply to the business associate and/or academic institution with respect to such information;
- E. Make available PHI in accordance with the individual's right to access such information, including any amendments to PHI, and to provide an accounting of disclosures in accordance with the individual's right to request an amendment or accounting of PHI;
- F. Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by the business associate and/or academic institution on behalf of the Division, available to the federal Department of Health and Human Services for purposes of determining the Divisions compliance with HIPAA regulations;
- G. At termination of a contract, if feasible, return or destroy all PHI; received from, created, or received by the business associate and/or academic institution on behalf of the Division; furthermore, business associates and/or academic institutions may not retain copies of such information; and
- H. If such return or destruction is not feasible, extend the protections of the contract to the information for as long as the business associate maintains the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible;
- Ensure any agent including subcontractors or employees of the business associate agrees to implement reasonable and appropriate safeguards to protect health information and ensure that any actions or omissions by the agent, subcontractors and employees do not cause the business associate to breach the terms of the Business Associate Addendum;
- J. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI that

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- the business associate creates, receives, maintains or transmits on behalf of the Division; and
- K. Authorize termination of the contract by the Division if the Division determines that the business associate has violated a material term of the Business Associate Addendum.
- IV. Contracts or agreements between the Division and a business associate and/or academic institution may permit the business associate and/or academic institution to do the following:
  - A. Provide data aggregation services relating to the health care operations of the Division;
  - B. Use the information received in its relationship with the Division, if necessary, for the proper management and administration of the business associate and/or academic institution or to carry out the legal responsibilities of the business associate and/or academic institution:
  - C. Use and disclose PHI if law or regulations requires the disclosure, and
  - D. Use and disclose PHI if the business associate and/or academic institution obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person. The person to whom the PHI is disclosed must notify the business associates and/or academic institution of any instances of which it is aware that the confidentiality of the information has been breached.
- V. Contracts or agreements between the Division and a business associate and/or academic institution will prohibit a business associate and/or academic institution to use or disclose PHI in a manner that would violate HIPAA Privacy and Security Regulations.
- VI. If the business associate and/or academic institution is also a government entity, the Division may enter into an Interlocal Agreement or other applicable agreement with the business associate and/or academic institution that contains terms that accomplish the objectives of the business associate contract provisions stated above.
- VII. When a business associate and/or academic institution is required by law or regulation to perform a function on behalf of the Division, the Division may disclose PHI to the business associate and/or academic institution in order to comply with the legal mandate without having a signed business associates contract. However, the Division must attempt to obtain satisfactory assurances that the requirements applicable to the

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business associate contract are met. If such attempt fails, the Division will document the attempt and the reasons that such assurances cannot be obtained.

- VIII. The Division Contract Manager will notify the Division HIPAA Compliance Officer when a contract with a business associate is terminated. The Division HIPAA Compliance Officer will determine the most appropriate method of safeguarding the return or destruction of PHI. If the business associate reports that return or destruction of PHI is not feasible, the Division HIPAA Compliance Officer will consider the circumstances and recommend whether the Division will agree or disagree with the report. If the Division's decision is to disagree, appropriate Division staff will, in consultation with the Division's HIPAA Compliance Officer, enforce the return or destruction of PHI in the manner deemed most effective. The disposition of PHI upon contract termination will be documented in the Division files.
- VIV. Each Division agency shall develop specific written procedures to implement the provisions of this policy or shall incorporate this policy into their agency policies.

CHAO BRANDONEUS)

Administrator

Effective Date: 4/15/03

Date Revised: 4/15/03; 7/18/07

Date Approved by MHDS Commission:

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#### **BUSINESS ASSOCIATE ADDENDUM**

#### BETWEEN

THE DIVISION OF MENTAL HEALTH AND DEVELOPMENTAL SERVICES (MHDS) hereinafter referred to as the "Covered Entity"

# and (Enter Business Name)

hereinafter referred to as the "Business Associate", (individually, a "Party" and collectively, the "Parties"

This Addendum is entered into between the Covered Entity and the Business Associate, effective as of (Enter Starting Date)

PURPOSE. In order to comply with the requirements of 45 CFR Parts 160, 162 and 164 (the HIPAA Security and Privacy Rule), this Addendum is hereby added and made part of the Contract between the Division of Mental Health and Developmental Services (MHDS) and [CONTRACTOR] dated \_\_\_\_\_\_. This Addendum establishes obligations of the Business Associate and the permitted and required uses and disclosures by the Business Associate of Protected Health Information (PHI) it may possess by reason of the Contract. This Addendum does not apply to disclosures by another Covered Entity regarding treatment of an individual.

WHEREAS, the Business Associate will provide certain services to the Covered Entity, and, pursuant to such arrangement, the Business Associate may be considered a "business associate" of the Covered Entity as defined in the HIPAA Security and Privacy Rule; and

WHEREAS, the Business Associate may have access to and/or receive from MHDS certain PHI, in fulfilling its responsibilities under such arrangement;

THEREFORE, the Covered Entity and the Business Associate agree to the provisions of this Addendum in order to address the requirements of the HIPAA Security and Privacy Rule and to protect the interests of both Parties.

- DEFINITIONS. The following terms shall have the meaning ascribed to them in this Section.
   Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear.
  - 1. Business Associate shall mean [NAME OF ORGANIZATION], as defined by 45 CFR Part 160.103.
  - 2. CFR stands for the Code of Federal Regulations.
  - 3. Contract shall refer to that particular Contract to which this Addendum is made a part.
  - 4. Covered Entity shall mean MHDS, as the entity providing, receiving, or transmitting the PHI as defined in 45 CFR Part 160.103.
  - 5. Designated Record Set means a group of records maintained by or for a Covered Entity that includes the medical, billing, enrollment, payment, claims adjudication,

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- and case or medical management records. Refer to 45 CFR 164.501 for the complete definition.
- 6. Disclosure means the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information. (45 CFR 160.103)
- 7. Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media. (45 CFR 160.103)
- 8. HIPAA Security and Privacy Rule shall mean the federal regulations at 45 CFR Parts 160, 162, and 164.
- 9. Individual is defined by 45 CFR 160.103 and shall include a person who qualifies as a personal representative as identified in 45 CFR 164.502(g).
- 10. Individually Identifiable Health Information shall mean health information, including demographic information collected from an Individual and is created or received by a health care provider, health plan, employer or health care clearinghouse and relates to the past, present or future physical or mental health or condition of an Individual or the payment for the provision of health care to the Individual that identifies the Individual or where there is a reasonable basis to believe the information can be used to identify the Individual. (45 CFR 160.103)
- 11. Parties shall mean the Business Associate and MHDS.
- 12. Protected Health Information (PHI) means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. Refer to 45 CFR 160.103 for complete definition, including exceptions.
- 13. Required by Law means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons and statutes or regulations that require the production of information if payment is sought under a government program providing public benefits. Refer to 45 CFR 164.103 for the complete definition.
- 14. Secretary shall mean the Secretary of the Department of Health and Human Services (DHHS) or the Secretary's designee.

#### II. OBLIGATIONS OF THE BUSINESS ASSOCIATE. The Business Associate must:

- 1. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity, including those required by the HIPAA Security and Privacy Rule.
- 2. Ensure that any agent, including a subcontractor or employee of the Business Associate agrees to implement reasonable and appropriate safeguards to protect PHI and the Business Associate will take reasonable steps to ensure that any actions or omission by the agents, subcontractors or employees of the Business Associate do not cause the Business Associate to breach the terms of this Addendum.
- 3. Promptly report to the Covered Entity any security incident or use or disclosure of PHI, not provide by the Contract of this Addendum, of with the Business Associate becomes aware.

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- 4. Provide details of any security incident or use or disclosure of PHI, to the Covered Entity including, at a minimum, the date of the incident, scope of the incident and actions taken to prevent reoccurrence.
- 5. Authorize termination of the Contract by the Covered Entity, if the Covered Entity determines that the Business Associate has violated a material term of this Addendum.
- 6. Not use or further disclose PHI in a manner that would violate the requirements of the HIPAA Security and Privacy Rule.
- 7. Not use or further disclose PHI other than as permitted or required by the Contract or as Required by Law.
- 8. Use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by the Contract and mitigate, to the extent practicable, any harmful effect that is known to the Business Associate, or a use or disclosure of PHI, by the Business Associate, in violation of the requirements of this Addendum.
- 9. Ensure that any agent, including a subcontractor, to whom the Business Associate provides PHI which is received from, or created or received by the Business Associate on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply to the Business Associate through this Addendum with respect to such information.
- 10. Provide, as directed by the Covered Entity, an Individual access to inspect or obtain a copy of the PHI about the Individual that is maintained in a Designated Record Set in order to meet the requirements of 45 CFR Part 164.524.
- 11. Make available PHI for amendment and incorporate any amendments in the Designated Record Set, as directed by the Covered Entity or an Individual, in order to meet the requirements of 45 CFR 164.526.
- 12. Make available the information required for the Covered Entity to respond to requests for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.
- 13. Make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of the Covered Entity available to the Secretary or the Covered Entity for the Secretary to determine the Covered Entity's compliance with the HIPAA Security and Privacy Rule.
- III. PERMITTED USE AND DISCLOSURES BY THE BUSINESS ASSOCIATE. The Business Associate agrees to these general use and disclosure provisions:
  - Except as otherwise limited in this Addendum, the Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified in the Contract, provided that such use or disclosure would not violate the HIPAA Security and Privacy Rule, if done by the Covered Entity.
  - Except, as otherwise limited in this Addendum, the Business Associate may use PHI
    received by the Business Associate in its capacity as a Business Associate of the
    Covered Entity, as necessary, for the proper management and administration of the
    Business Associate or to carry out the legal responsibilities of the Business Associate.
  - Except as otherwise limited by this Addendum, the Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided the disclosures are:
    - a. Required by Law; or

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- b. The Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person; and
- c. The person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- 4. Except as otherwise limited by this Addendum, the Business Associate may use PHI to provide data aggregation services, for and as directed by, the Covered Entity and as permitted by 45 CFR 164.504(e)(2)(i)(B).
- 5. The Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

# IV. OBLIGATIONS OF THE COVERED ENTITY. The Covered Entity will notify the Business Associate:

- Of any limitations in its Notice of Privacy Practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of PHI
- 2. Of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect the Business Associate's use or disclosure of PHI.
- 3. Of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.

### V. PERMISSIBLE REQUESTS BY THE COVERED ENTITY.

Except in the event of lawful data aggregation or management and administrative activities, the Covered Entity shall not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Security and Privacy Rule, if done by the Covered Entity.

#### VI. TERM AND TERMINATION.

- 1. TERM. The Term of this Addendum shall commence as of the effective date of this Addendum herein and shall extend beyond the termination of the Contract and shall terminate when all the PHI provided by the Covered Entity to the Business Associate, or created or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is not feasible to return or destroy the PHI, protections are extended to such information, in accordance with the termination.
- TERMINATION FOR BREACH. The Business Associate agrees that MHDS may immediately terminate the Contract if MHDS determines that the Business Associate has violated a material term of this Addendum.

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#### 3. TERMINATION.

- a. Except as provided in paragraph (b) of this section, upon termination of this Agreement, for any reason, the Business Associate will return or destroy all PHI received from the Covered Entity or created or received by the Business Associate on behalf of the Covered Entity that the Business Associate still maintains in any form and the Business Associate will retain no copies of such information.
- b. If the Business Associate determines that returning or destroying the PHI is not feasible, the Business Associate will provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon a mutual determination that return or destruction of PHI is infeasible, the Business Associate shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make return or destruction infeasible, for so long as the Business Associate maintains such PHI.
- c. These termination provisions will apply to PHI that is in the possession of subcontractors, agents, or employees of the Business Associate.

#### VII. MISCELLANEOUS.

- AMENDMENT. The Parties agree to take such auction as is necessary to amend this Addendum from time to time as is necessary for the Covered Entity to comply with all the requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191.
- 2. INTERPRETATION. Any ambiguity in this Addendum shall be resolved to permit the Covered Entity to comply with the HIPAA Security and Privacy Rule.

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COVERED ENTITY	BUSINESS ASSOCIATE
Division of Mental Health and Developmental Services	(Enter Business Name)
4126 Technology Way, Suite 201	(Enter Business Address)
Carson City, NV 89706	(Enter Business City, State and Zip Code)
(775) 684-5963 (Phone)	(Enter Business Phone Number)
(775) 684-5964 (Fax)	(Enter Business FAX Number)
(Authorized Signature)	(Authorized Signature)
(Print Name)	(Print Name)
(Title)	(Title)
(Date)	(Date)