

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT by and between Choices in Community Living, hereinafter referred to as "Covered Entity," and _____, hereinafter referred to as "Business Associate," (individually referred to as a "Party" and collectively as the "Parties") is made effective this ____ day of _____.

RECITALS:

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services for or on behalf of Covered Entity, and pursuant to such arrangement, Business Associate may be considered a "business associate," as that term is defined in 45 CFR § 160.103, of Covered Entity. The agreement evidencing such arrangement is reflected in a written agreement dated _____ (hereinafter referred to "Arrangement Agreement"). This Agreement is hereby incorporated into and made a part of the Arrangement Agreement;

WHEREAS, Business Associate will have access to individually identifiable health information (hereinafter, "Protected Health Information" or "PHI"), as that term is defined in 45 CFR §160.103, in connection with the performance of services pursuant to the Arrangement Agreement; and

WHEREAS, the Parties intend that this Agreement will govern the terms and conditions under which PHI may be used or disclosed by Business Associate in conformity with the Standards for Privacy of Individually Identifiable Health Information set forth in 45 CFR, Parts 160 and 164 (the "Privacy Regulations") and the Security Standards for the Protection of Electronic Protected Health Information set forth at 45 CFR, Parts 160 and 164 (the "Security Regulations") (hereinafter collectively referred to as the "Privacy and Security Regulations"), promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

NOW, THEREFORE, in consideration of the Parties' continuing obligations under the Arrangement Agreement, compliance with the Privacy and Security Regulations, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows.

The above recitals are true and correct and are hereby made a substantive part of this Agreement.

I. DEFINITIONS

(A). Except as otherwise defined herein, any and all terms in this Agreement shall have the definitions set forth in the Privacy and Security Regulations.

(B). For purposes of this Agreement, "Protected Health Information" or "PHI" shall include "Electronic Protected Health Information" as that term is defined in 45 CFR § 160.103.

II. COMPLIANCE WITH LAW

Business Associate shall carry out its obligations under this Agreement so as to (i) ensure that the provision of services contemplated under the Arrangement Agreement complies with all applicable laws and regulations, including without limitation the Privacy and Security Regulations, to protect the privacy and security of any PHI that is accessed as a result of the services provided pursuant to the Arrangement Agreement, and (ii) implement any changes required during the term of this Agreement which are necessary to adapt the services to comply with any future applicable laws or

regulations, including, with limitation, additional privacy and security requirements promulgated under HIPAA and other applicable State and Federal laws and regulations.

III. COORDINATION WITH HIPAA PRIVACY/SECURITY RULE

In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the Privacy and Security Regulations, as amended, the Privacy and Security Regulations in effect at the time shall control. Where provisions of this Agreement are different than those mandated in the Privacy and Security Regulations, but are nonetheless permitted by the Privacy and Security Regulations, the provisions of this Agreement shall control.

The Parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services for or on behalf of Covered Entity contains provisions relating to the use or disclosure of PHI, which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of PHI.

IV. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

(A). Scope. Business Associate acknowledges and agrees that all PHI that is created or received by Covered Entity and disclosed or made available in any form, including but not limited to paper record, oral communication, audio recording and electronic display by Covered Entity to Business Associate or is created or received by Business Associate for or on behalf of Covered Entity shall be subject to this Agreement.

(B). Prohibited Uses and Disclosures. Business Associate agrees not to use or further disclose PHI obtained or accessible by it as a result of its performance under the Arrangement Agreement other than as permitted or required by this Agreement or as required by law.

(C). Safeguards. Business Associate agrees to (i) use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for under this Agreement in connection with the services performed under the Arrangement Agreement and (ii) use appropriate administrative, physical and technical safeguards, including encryption, that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic PHI that it creates, receives, maintains or transmits for or on behalf of Covered Entity, as required by the Security Regulations. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

(D). Reporting. Business Associate agrees to promptly report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware. Business Associate further agrees to promptly report to Covered Entity, in writing, any Security Incident with respect to Electronic PHI of which it becomes aware. Reports will be submitted to the Compliance Officer of Choices in Community Living /Chasity Cook (or the Executive Director) **within two (2) days of discovery.**

(E). Subcontractors. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides or who has access to PHI agrees to the same restrictions and

conditions that apply through this Agreement to Business Associate with respect to such information, including implementing reasonable and appropriate safeguards to protect such information.

(F). Access. Business Associate agrees to promptly make PHI available to an individual who has a right of access to inspect and obtain a copy of the PHI about the individual, to the extent and in the manner required by the Privacy Rule, 45 CFR §164.524. Business Associate shall promptly provide notice to Covered Entity of a request made to Business Associate for access to PHI by an individual.

(G). Amendment. Business Associate agrees to promptly make PHI available for amendment and incorporate any amendments to PHI made or authorized by Covered Entity in accordance with the requirements of the Privacy Rule, 45 CFR §164.526. Business Associate shall promptly provide notice to Covered Entity of a request made to Business Associate for any amendments to PHI by an individual.

(H). Accounting. Business Associate agrees to document any disclosures of PHI. Business Associate further agrees to promptly make available to Covered Entity, upon a request for an accounting by an individual as required by the Privacy Rule, 45 CFR § 164.528, any information required by Covered Entity to provide an accounting of Business Associate's disclosures of PHI. Business Associate shall promptly provide notice to Covered Entity of a request made to Business Associate for an accounting of disclosures of PHI by an individual.

(I). Books and Records. Business Associate agrees to make internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate for or on behalf of Covered Entity available to Covered Entity, or at the request of Covered Entity to the Secretary of Health and Human Services (the "Secretary") for purposes of determining the Covered Entity's compliance with Federal Regulations. In responding to any such request that Business Associate make its internal practices, book and records available to the Secretary, Business Associate shall not initially furnish documents or information protected from disclosure by ethical obligations of confidentiality and/or any other applicable privilege or ethical obligation unless Covered Entity expressly authorized Business Associate to do so.

(J). Sanction Procedures. Business Associate agrees that it must develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Appendix or the HIPAA Privacy Regulations, 45 CFR §164.530(e)(1).

(K). Grounds for Breach. Any non-compliance by Business Associate with this Appendix or the HIPAA Privacy Regulations will automatically be considered to be grounds for breach pursuant to the underlying agreement, if Business Associate knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance.

(L). Termination by Commonwealth. Business Associate authorizes termination of the underlying contract by the Commonwealth if the Commonwealth determines, in its sole discretion that the Business Associate has violated a material term of this Appendix.

(M). Privacy Practices. The Program or Department shall provide and Business Associate shall immediately begin using, any form, including but not limited to, any form used for Consent, Notice of Privacy Practices, Accounting for Disclosures, or Authorization, designated as effective by the Program or Department at any given time. The Program and Department retain the right to change the applicable privacy practices and documents. The Business Associate must implement changes as soon as practicable, but not later than 45 days from the date of notice of the change.

V. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities or services for or on behalf of Covered Entity, provided that such use or disclosure would not violate the Security and Privacy Regulations if done by Covered Entity. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate. To the extent Business Associate discloses PHI to a third party, Business Associate must obtain, prior to making such disclosure: (i) reasonable assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement, and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) an agreement from such third party to immediately notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

VI. TERM AND TERMINATION

(A). Term. The Term of this Agreement shall be effective as of the date first written above, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate for or on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions provided for in this Section.

(B). Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate or Business Associate's refusal to implement any changes that are required or reasonably requested to ensure Covered Entity's compliance with any future applicable laws or regulations, including, with limitation, additional privacy and security requirements promulgated under HIPAA and other applicable State and Federal laws and regulations, Covered Entity shall have the right to immediately terminate this Agreement and the Arrangement Agreement with written notice to Business Associate.

(C). Effect of Termination.

i. Except as provided in paragraph (ii) of this subsection, upon termination of this Agreement, the Arrangement Agreement or upon request of Covered Entity, whichever occurs first, Business Associate shall return or destroy all PHI received from or on behalf of Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

ii. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI, including those protections referenced in Section 3(d) above, and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. This provision shall survive any termination or expiration of this Agreement.

iii. The obligations of Business Associate under this Section V(C) shall survive the expiration, termination, or cancellation of this Agreement, the Arrangement Agreement and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

VII. INDEMNIFICATION

Business Associate shall indemnify and hold Covered Entity harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards, or other expenses, of any kind or nature whatsoever, including, without limitation, attorney's fees, expert witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out of any breach or alleged breach of this Agreement or any provision of the Privacy and Security Regulations by Business Associate.

VIII. MISCELLANEOUS

(A). No Rights in Third Parties. Except as expressly stated herein or the Privacy or Security Regulations, the Parties to this Agreement do not intend to create any rights in any third parties.

(B). Amendment. This Agreement may be amended or modified only in a writing signed by the Parties. Notwithstanding the foregoing, the Parties agree that this Agreement will be automatically amended to conform to any future applicable laws or regulations, including, with limitation, additional privacy and security requirements promulgated under HIPAA and other applicable State and Federal laws and regulations.

(C). Assignment. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.

(D). Independent Contractor. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effectuating the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship.

(E). Governing Law. This Agreement will be governed by the laws of the Commonwealth of Pennsylvania without regard to its conflict of laws principles.

(F). No Waiver. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

(G). Interpretation. The terms of this Agreement shall be construed in light of the official interpretation and/or guidance on HIPAA, the Privacy Regulation and/or the Security Regulation issued by HHS, the Office of Civil Rights or the Centers for Medicare and Medicaid Services from time to time.

(H). Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.

(I). Notice. Any notification required in this Agreement shall be made in writing to the representative of the other Party who signed this Agreement or the person currently serving in that representative's position with the other Party.

(J). Counterpart and Electronic Execution. This Agreement may be executed in any number of counterparts with the same effect as if all the Parties had signed the same document. Such executions may be transmitted to the Parties electronically or by facsimile and such electronic or facsimile execution shall have the full force and effect of an original signature. All fully executed counterparts, whether original, electronic or facsimile executions or a combination, shall be construed together and constitute on and the same agreement.

IX. OBLIGATIONS OF COVERED ENTITY

(A). Provision of Notice of Privacy Practices. Covered Entity shall provide Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as changes to such notice.

(B). Permissions. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI, if such change effect Business Associate's permitted or required uses and disclosures.

(C). Restrictions. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR §164.522.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

Choices In Community Living

COVERED ENTITY:

BUSINESS ASSOCIATE:

Signature

Signature

Print Name

Print Name

Title

Title

Disclaimer to covered entities: This template is not a substitute for legal advice and is for informational purposes only and should not be construed as legal advice.