



130 West Washington Street, Nanticoke, PA 18634
(570) 735-7590 • FAX (570) 735-3363

May 5, 2014

Stanley Strelish
Luzerne County Transportation Authority
315 Northampton Street
Kingston, PA 18704

Re: Business Associate Agreement
Amended 9-23-13

Dear Mr. Strelish:

In order to comply with the Health Information Technology for Economic Clinical Health (HITECH) Act, I am enclosing a Business Associate Agreement for you to sign.

Effective February 17, 2010, revisions were made to business associates of covered entities directly governed by the HIPAA Privacy and Security Rules. The HITECH Act specifically requires that Business Associate Agreements describe the business associate's new obligations.

On September 23, 2013, revisions to the HITECH Act (45 C.F.R. and 160.103) and the Business Associate Agreement were implemented and this agreement closely tracks the language and the regulation changes.

Please return one signed copy of the enclosed agreement to me and keep one for your records. If you have any questions, please feel free to call me.

Sincerely,

Margaret Dayson Matisko, MGA
Human Resources Director
HIPAA Privacy Officer

MDM/ac

BUSINESS ASSOCIATE AGREEMENT

This Agreement is made as of the 23rd day of September 2013, by and between Northeast Counseling Services organized under the laws of Pennsylvania, and Luzerne County Transportation Authority In consideration of the mutual covenants contained in this Agreement and intending to be legally bound, the parties agree as follows:

Section I. Definitions

- (a) Business Associate: "Business Associate" shall generally have the same meaning as the term "Business Associate" at 45 C.F.R. § 160. 103. And in reference to the party to this Agreement, shall mean Luzerne County Transportation Authority.
- (b) Covered Entity: "Covered Entity" shall generally have the same meaning as the term "Covered Entity" at 45 C. F. R. § 160. 103. And as referenced in this Agreement, shall mean Northeast Counseling Services.
- (c) Protected Health Information: "Protected Health Information: ("PHI") means individually identifiable health information that is transmitted by or maintained in electronic media or in any other form or medium, except as excluded from the definition of PHI found at 45 C. F. R. § 160. 103.
- (d) Breach: "Breach" means the acquisition, access, use or disclosure of PHI in a manner not permitted under subpart E of Part 164 of the HIPAA Privacy Regulations which compromises the security or privacy of the PHI and that is not excluded from the definition of "Breach" found at 45 C.F.R. § 164.402. In the event of any inconsistency between the definition of "Breach" in this Agreement and the definition in the Privacy Regulations, the definition in the Privacy Regulations will control.
- (e) HITECH Act: "HITECH Act" shall mean the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act, Pub. L. No. 111-5 as may be amended.
- (f) Privacy Regulations: "Privacy Regulations" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A, D and E, as may be amended.
- (g) Security Regulations: "Security Regulations" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and C, as may be amended.

- (h) Secretary: "Secretary" shall mean the Secretary of the federal Department of Health and Human Services.
- (i) Unsecured Protected Health Information: "Unsecured Protected Health Information" shall mean Protected Health Information in any form, including electronic, paper or verbal, that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of the HITECH Act, as may be amended.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. § § 160.103, 164.304, 164.402 and 164.501.

Section 2. Obligation and Activities of Business Associate

Business Associate agrees to:

- (a) not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law;
- (b) use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement;
- (c) 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) immediately report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware including Breaches of Unsecured PHI as required at 45 C.F.R. §164.410, and any Security Incident of which it becomes aware; with respect to Breaches of Unsecured PHI, such report shall include at least the following information:
 - (1) the identity of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during the breach;
 - (2) a brief description of what happened;
 - (3) the date of discovery of the breach;

- (4) the nature of the Unsecured PHI that was involved (e.g., social security numbers, date of birth, etc.);
 - (5) any steps individuals should take to protect themselves from potential harm resulting from the breach; and
 - (6) a brief description of what the Business Associate is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches;
- (e) ensure that any agent, including a subcontractor, that creates, receives, maintains or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information;
- (f) provide access to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual or an individual's designee in order to meet the requirements under 45 C.F.R. §164.524; or applicable state law, and in the time and manner designated by the Covered Entity;
- (g) make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. §164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity;
- (h) make its internal practices, books, and records, including policies and procedures relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy Regulations;
- (i) document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity or Business Associate to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528;
- (j) provide to Covered Entity or an Individual information collected in accordance with Section 2(i) of this Agreement, to satisfy the requirements for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528 or Section 13405 (c) (3) of the HITECH Act.
- (k) Implement administrative, physical, and technical safeguards and security measures that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI that it

creates, receives, maintains, or transmits on behalf of Covered Entity, and, effective February 17, 2010, to comply with the provisions of the Security Standards and other regulations identified in Section 3 (a) (1) (B) of this Agreement;

- (l) Ensure that any agent, including a subcontractor, to whom it provides electronic PHI agrees in writing to implement reasonable and appropriate safeguards to protect it;
- (m) Report to Covered Entity any material attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- (n) Comply, and require any subcontractor or agency to comply with any applicable requirements of Title 45, Part 162 of the C.F.R. to the extent that Business Associate or such subcontractor or agent conducts any Standard Transaction for or on behalf of Covered Entity, and not enter into or permit its subcontractors or agents to enter into any Trading Partner Agreement in connection with the conduct of Standard Transactions for or on behalf of Covered Entity that violate the provisions of 45 C.F.R. §162.915; and
- (o) Comply with state laws, rules and regulations applicable to PHI not preempted pursuant to 45 C.F. R. Part 160, Subpart B or the Employee Retirement Income Security Act of 1974 ("ERISA") as amended.

Section 3. Permitted Uses and Disclosures by Business Associate

(a) Statutory Duties

- (1) Business Associate acknowledges that it has a statutory duty under the HITECH Act to, among other duties:
 - (A) effective February 17, 2010, use and disclose PHI only in compliance with 45 C.F.R. §164.504(e) (the provisions of which have been incorporated into this Agreement); and
 - (B) effective February 17, 2010, comply with 45 C.F.R. § § 164.308 ("Security Standards: General Rules") 164.308 ("Administrative Safeguards"), 164.310 ("Physical Safeguards"), 164.312 ("Technical Safeguards"), and 164.316 ("Policies and Procedures and Documentation Requirements"). In complying with 45 C.F.R. § 164.312 ("Technical Safeguards"), Business Associate shall consider guidance issued by the Secretary pursuant to Section

13401(c) of the HITECH Act, and if a decision is made to not follow such guidance, document the rationale for the decision.

- (2) Business Associate acknowledges that its failure to comply with these or any other statutory duties could result in civil and/or criminal penalties under 42 U.S.C. § § 1320d-5 and 1320d-6.

(b) General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI as Required by Law or to perform functions, activities, or services for, or on behalf of, Covered Entity pursuant to the underlying service agreement between the parties, provided that such use or disclosure would not violate the Privacy Regulations if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. Business Associate agrees to limit any use, disclosure or request for use or disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure or request in accordance with the requirements of the Privacy Regulations, and except as allowed by 45 C.F.R. § 164.502 (b).

(c) Specific Use and Disclosure Provisions

- (1) Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (2) Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that the disclosures are Required by Law or Business Associate obtains reasonable assurances, as evidenced by written contract, from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (3) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 C.F.R. § 164.504 (e)(2)(i)(B).
- (4) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

- (5) Business Associate may not receive direct or indirect remuneration in exchange for PHI unless permitted by the Act or regulations issued by the Secretary.

Section 4. Obligations of Covered Entity

Covered Entity shall

- (a) notify Business Associate of any limitation(s) in its Notice of Privacy Practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI and Business Associate shall comply with such limitations;
- (b) notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information, and Business Associate shall comply with such changes;
- (c) notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information, and Business Associate shall comply with such restrictions.

Section 5. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 C.F.R. Part 164 of the Privacy Regulations if done by Covered Entity except for cases where Business Associate will use or disclose PHI for Data Aggregation or management or administration or legal responsibilities of the Business Associate.

Section 6. Term and Termination

- (a) Term: This Agreement shall be effective as of September 23, 2013 and shall terminate (1) the later of termination of the underlying service agreement or of the Business Associate completing its legal responsibilities under that agreement and this Agreement, or (2) on the date Covered Entity terminates this Agreement for cause as authorized in paragraph (b) of this Section 6, whichever of (1) or (2) is sooner.
- (b) Termination for Cause: Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

- (1) provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or
- (2) immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible;

(a) Effect of Termination:

- (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created, maintained or received by Business Associate on behalf of Covered Entity that Business Associate on behalf of Covered Entity that Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI.
- (2) In the event that Business Associate determines that returning or destroying the PHI is not feasible, 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 not feasible, Business Associate shall extend the protections of this Agreement to such PHI 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 Protected Health Information.
- (3) Business Associate shall ensure that all PHI created, received, or maintained by any subcontractor or agent of Business Associate is properly handled in accordance with this Section 6(c).

Section 7. Miscellaneous:

- (a) Regulatory References: A reference in this Agreement to a section in the Privacy Regulations or Security Regulations means the section in effect, or as amended.
- (b) Amendment: Upon the effective date of any amendment to the Privacy Regulations, the Security Regulations, the Health Insurance Portability and Accountability Act, the HITECH Act and its implementing regulations, or state laws or regulations applicable to PHI, this Agreement shall automatically amend such that the obligations imposed on Business Associate as a Business Associate remain in compliance with such amended statutes and regulations.

- (c) Survival: The respective rights and obligations of Business Associate under Section 6(c) of this Agreement shall survive the termination of this Agreement.
- (d) Interpretation: Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Regulations, the Security Regulations, the Health Insurance Portability and Accountability Act, and the HITECH Act.
- (e) Identity Theft Regulations: To the extent that Business Associate provides services in connection with an account maintained by the Covered Entity that permits patients to make multiple payments for services rendered by the Covered Entity (including, but not limited to, billing and collection services), Business Associate shall have and follow policies to detect and prevent identity theft in accordance with the identity theft regulations of the Federal Trade Commission, 16 C.F.R. § 681.2. In addition, in such case Business Associate shall: (1) report to Covered Entity any pattern, practice or specific activity that indicates the possible existence of identity theft ("red Flags") involving anyone associated with Covered Entity, including its patients, employees, and contractors, and (2) take appropriate steps to prevent or mitigate identity theft when a Red Flag is detected.
- (f) Indemnification and Insurance: Business Associate agrees to indemnify, defend and hold harmless Covered Entity and its employees, directors, officers, subcontractors, agents, or other members of its workforce from any costs, damage, expenses, judgments, penalties (including but not limited to any penalties imposed by the Secretary of Health and Human Services), losses and attorney's fees arising from any breach of this Agreement by Business Associate, or arising from any negligent or wrongful acts or omissions of Business Associate, including a violation of or failure to perform its obligations under HIPAA, the HITECH Act, the Privacy Regulations or the Security Regulations (collectively "the HIPAA Rules") as they may be amended. Business Associate's indemnification obligation shall survive the expiration or termination of this Agreement for any reason. Business Associate will carry appropriate insurance to cover violations of the HIPAA Rules and to cover the indemnification obligation set forth in this section and will name Covered Entity as an additional insured under such insurance policies.

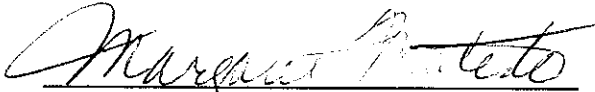
The parties have caused this Agreement to be executed on the date first written above.

NORTHEAST COUNSELING SERVICES

WITH INTENT TO BE LEGALLY BOUND, THE PARTIES, THROUGH THEIR AUTHORIZED REPRESENTATIVES SIGNIFY THEIR ASSENT TO THE FOREGOING

BY: NORTHEAST COUNSELING SERVICES

BUSINESS ASSOCIATE



Margaret Davison Matisko, MGA
Human Resources Director
HIPAA Privacy Officer

Stanley Strelish
LCTA

5-6-14

(Date)

(Date)