

OCT 13 2020

Approved

REQUEST FOR AGENDA PLACEMENT FORM

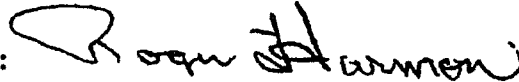
Submission Deadline - Tuesday, 12:00 PM before Court Dates

SUBMITTED BY: Carla Hester

TODAY'S DATE: 9/30/2020

DEPARTMENT: Indigent Health

SIGNATURE OF DEPARTMENT HEAD:



REQUESTED AGENDA DATE: Tuesday, October 13, 2020

SPECIFIC AGENDA WORDING: Consideration of Business Associate Agreement with Integrated Prescription Management (IPM)

PERSON(S) TO PRESENT ITEM: Shelly Bone, Indigent Health

SUPPORT MATERIAL: (Must enclose supporting documentation)

TIME: 5 min.

ACTION ITEM: _____

WORKSHOP _____

(Anticipated number of minutes needed to discuss item) **CONSENT:** _____

EXECUTIVE: _____

STAFF NOTICE:

COUNTY ATTORNEY: _____

IT DEPARTMENT: _____

AUDITOR: _____

PURCHASING DEPARTMENT: _____

PERSONNEL: _____

PUBLIC WORKS: _____

BUDGET COORDINATOR: _____

OTHER: IH _____

*****This Section to be Completed by County Judge's Office*****

ASSIGNED AGENDA DATE: _____

REQUEST RECEIVED BY COUNTY JUDGE'S OFFICE _____

COURT MEMBER APPROVAL _____ Date _____



BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT is made between Integrated Prescription Management, Inc., whose principal place of business is 7815 N. Palm Ave, Suite 400, Fresno California 93711 and Johnson County, Texas . This

Agreement is for the purpose of addressing the measures that the Parties will take to protect the confidentiality of certain health information that either Party may deliver to the other, or that one Party may receive on behalf of the other. This Agreement is to be in effect as of 02/01/2020 and shall continue until terminated as herein provided.

WHEREAS, the disclosure of certain health-related information is regulated by the provisions of 45 U.S.C. §§1171 et seq., enacted by (i) the *Health Insurance Portability and Accountability Act of 1996* and the regulations promulgated thereunder (collectively referred to as "HIPAA Implementing Regulations"); (ii) Title XIII of the *American Recovery and Reinvestment Act of 2009 (ARRA)* entitled *Health Information Technology for Economic and Clinical Health Act* ("HITECH") 42 U.S.C. §§17921, et seq.; and (iii) the requirements of the final modifications to the HIPAA Privacy, Security, Enforcement and Breach Notification Rules as issued on January 25, 2013 and effective March 26, 2013, 75 Fed Reg 5566, ("the Final Regulations"). The Implementing Regulations, the HITECH Act, and the Final Regulations are collectively referred to in this Agreement as "the HIPAA Requirements".

WHEREAS, in performance of their contractual obligations to each other, or to other third parties, the Parties may exchange Protected Health Information ("PHI", as that term is defined by the HIPAA Requirements) in connection with health benefit plans or administration services;

WHEREAS, one Party may receive or disclose PHI on behalf of the other Party in connection with those contractual obligations;

WHEREAS, the Parties desire that this Agreement accurately reflect the requirements of the HIPAA Requirements as they apply to the disclosure and breach of PHI; and

WHEREAS, the Parties agree to incorporate into this Agreement any regulations issued by the U.S. Department of Health & Human Services ("DHHS") with respect to the HIPAA Requirements that relate to the obligations of either Party and that are required to be reflected in a Business Associate Agreement. The Parties recognize that they are obligated by law to meet the applicable HIPAA Requirements and that each Party has direct liability for any violation of the HIPAA Requirements.

NOW, THEREFORE, the Parties agree as follows:

1. Definitions

1.1. Catch-all definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA

Requirements: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations,

Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information ("PHI"), Electronic Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- (a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean both Parties, individually and jointly.
- (b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean both Parties, individually and jointly.
- (c) HIPAA Requirements. "HIPAA Requirements" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

2. Obligations and Activities of

Parties Parties agree to:

- (a) Not use or disclose PHI other than as permitted or required by the Agreement or as required by law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
- (c) Report to the other Party, within ten (10) business days, any known use or disclosure of PHI not permitted under the Agreement, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware;
- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors or service suppliers that create, receive, maintain, or transmit PHI on behalf of the Party agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information and execute a written Business Associate Agreement reflecting same;
- (e) Make PHI available in a designated record set to the other Party or to the "individual or the individual's designee" as necessary to satisfy either Party's obligations under 45 CFR 164.524;
- (f) Make any amendment(s) to PHI in a designated record set as directed or agreed to by the other Party pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy the other Party's obligations under 45 CFR 164.526;
- (g) Maintain and make available the information required to provide an accounting of disclosures to the other Party or "individual" as necessary to satisfy either Party's obligations under 45 CFR 164.528; and
- (h) To the extent either Party is to carry out one or more of the other Party's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the other Party in the performance of such obligation(s).

3. Permitted Uses and Disclosures by Business Associate

- (a) Each Party may use or disclose PHI only for any lawful purpose and as required for the performance of that Party's obligations under any contract or agreement related the

administration of or providing of services to, a health care plan, and only if the disclosure is in compliance with the HIPAA Requirements.

Except as otherwise limited in this Agreement, the Parties may disclose PHI to either Party's other Business Associates or vendor of personal health records, provided that such use or disclosure would not violate any Privacy Rule and that the other entity has executed a written Business Associate Agreement with the Party.

- (b) The Parties may use or disclose PHI as required by law.
- (c) The Parties agree to make uses and disclosures and requests for PHI consistent with the other Party's minimum necessary policies and procedures.
- (d) Neither Party may use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by the other Party.
- (e) Either Party may use PHI for the proper management and administration of that Party or to carry out the legal responsibilities of that Party.
- (f) Each Party may disclose PHI for the proper management and administration of that Party or to carry out the legal responsibilities of that Party, provided the disclosures are required by law, or the Party obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Party of any instances of which it is aware in which the confidentiality of the information has been breached.

4. Provisions for Party to Inform Other Party of Privacy Practices and Restrictions

(a) Each Party shall notify the other Party of any limitation(s) in the notice of privacy practices of that Party under 45 CFR 164.520, to the extent that such limitation may affect the other Party's use or disclosure of PHI. (b) Each Party shall notify the other Party of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect that Party's use or disclosure of PHI.

(c) Each Party shall notify the other Party of any restriction on the use or disclosure of PHI that the Party has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect the Party's use or disclosure of PHI.

5. Permissible Requests by Parties

Neither Party shall request the other Party to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 (or any other HIPAA Requirements) if done by covered entity.

6. Investigations

The Parties shall make their internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of the United States Department of Health and Human Services (the "Secretary") for purposes of determining the Parties' compliance with applicable law. A Party shall immediately notify the other Party in the event they receive or are otherwise notified of any request by the Secretary to conduct an investigation of the use or disclosure of PHI.

7. Audit Rights

(a) **Right to Audit.** Either Party, or its representative, shall be entitled after ten (10) business days' prior written notice to the other Party, to audit that Party to verify their compliance with the terms of this Agreement. The auditing Party shall be entitled and enabled to inspect the records and other information relevant to the audited Party's compliance with the terms of this Agreement. The auditing Party shall conduct its review during the normal business hours of the audited Party and shall have the right to conduct the audit in any reasonable manner which does not unreasonably interfere with the audited Party's normal operations.

(b) **Obligation to Maintain Records.** The Parties shall produce and maintain accurate and complete records of all receipts, transmissions, uses, and disclosures of PHI subject to HIPAA and HITECH reporting standards, throughout the term of any contracts between the Parties, or for such longer period as may be Required by Law. The Parties shall maintain all records and other information in a safe and secure environment and in compliance with applicable laws. The Parties shall maintain all records and other information with a system of audit trails and controls sufficient to allow either Party to confirm the other Party's compliance with any requirements or regulations enforced by the Secretary.

8. Term and Termination

(a) **Term.** The Term of this Agreement shall terminate when all PHI exchanged between the Parties or received by one Party on behalf of the other Party, is destroyed. Or, if it is not reasonably feasible to destroy the PHI, all protections created by this Agreement shall be extended to that PHI, or the date either Party terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) **Termination for Cause.** Either Party may terminate this Agreement if that Party determines that the other Party has violated a material term of the Agreement (c) **Obligations of Parties Upon Termination.**

Upon termination of this Agreement for any reason, each Party, with respect to PHI received from the other Party, or created, maintained, or received by the Party on behalf of the other Party, shall:

1. Retain only that PHI which is necessary for the Party to continue its proper management and administration or to carry out its legal responsibilities;
2. Return to the other Party the remaining PHI that the Party still maintains in any form;
3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as the Party retains the PHI;
4. Not use or disclose the PHI retained by the Party other than for the purposes for which such PHI was retained and subject to the same conditions which applied prior to termination; and
5. Return to the other Party the PHI retained by the Party when it is no longer needed by the Party for proper management and administration or to carry out its legal responsibilities.

(d) **Survival.** The obligations of both Parties under this Section shall survive the termination of this Agreement.

9. Miscellaneous

- (a) Regulatory References. A reference in this Agreement to a section in the HIPAA Requirements means the section as in effect or as amended.
- (b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement as is necessary to allow the Parties to meet their contractual obligations to comply with the requirements of the Privacy Rule or any other HIPAA Requirement. In the event of any amendment to HIPAA or HITECH or any other Privacy-related Rule, this Agreement will be deemed by all Parties to concurrently adopt such amendments and incorporate them in this Agreement as necessary to comply with such regulation or amendment. Such modifications to this Agreement will immediately be effective without the necessity of a signed amendment.
- (c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Requirements.

10. Obligations of Party's Subcontractors, Vendors and Other Third Parties

The Parties agree that as required by the HIPAA Requirements, each Party will enter into written Business Associate Agreements with all other Business Associates, or vendors or other third parties with access to PHI, that requires them to comply with Privacy and Security Rule provisions of this Agreement in the same manner as required of Parties, and notifies that Business Associate that they will incur liability under the HIPAA Requirements for non-compliance with such provisions. The Parties will assure that all other Business Associates provide written agreement to the same privacy and security restrictions, conditions and requirements that apply to the Parties regarding PHI.

11. Warranty of Authority

The Parties signing below warrant they are authorized to enter into this Agreement on behalf of their designated Party and do so with that Party's full consent and knowledge.

Name: Donald J. Galand
Title: SVP
Company: IPM
Date: 09/14/2020

Name: Roger J. Johnson
Title: County Judge
Company: Johnson Co.
Date: 10/13/2020