

HIPAA Privacy Compliance Business Associate Agreement

THIS AGREEMENT is made this 15th day of October, 2013, by and among FAMILY MEDICINE ASSOCIATES, P.A., a Corporation organized under the laws of the State of Texas and Johnson County, Texas, an organization under the laws of the State of Texas (hereinafter known as "Business Associate"). Covered Entity and Business Associate shall collectively be known herein as "the Parties".

WHEREAS, Covered Entity is a health care provider whose activities are generally described as: Medical Group Practice of primary care physicians;

WHEREAS, Business Associate is in the business of providing services to health care industry and its activities are generally described as: Subcontractor or other professional services that creates, receives, maintains, or transmits protected health information.

WHEREAS, Covered Entity wishes to continue an existing business relationship with Business Associate that has been memorialized in a separate services agreement which is still in effect.

WHEREAS, the nature of the existing contractual relationship between Covered Entity and Business Associate may involve the exchange of Protected Health Information (PHI) as that term is defined under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as amended by Health Information Technology and Economic and Clinical Health Act of 2009 (HITECH Act), including all pertinent regulations issued by the Department of Health and Human Service (HHS).

The premises having been considered and with acknowledgement of the mutual promises and of other good and valuable consideration herein contained, the Parties, intending to be legally bound, hereby agree as follows:

1. Definitions:

- a. **Business Associate**. "Business Associate" shall mean _____
- b. **Covered Entity**. "Covered Entity" shall mean **Family Medicine Associates, P.A.**
- c. **Individual**. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- d. **Privacy Rule**. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- e. **Protected Health Information**. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- f. **Required By Law**. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.103.
- g. **Secretary**. "Secretary" shall mean the Secretary of the Department of Health & Human Services or his designed.

2. Obligations the Business Associate agrees to:

- (a) Business Associate agrees not to use or disclose Protected Health Information other than as permitted or required by the Agreement or as required by law;

- (b) Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to physical or electronic protected health information, to prevent use or disclosure of Protected Health Information other than as provided for by the Agreement;
- (c) Business Associate agrees to report to Covered Entity any use or disclosure of Protected Health Information not provided for by the Agreement of which it becomes aware, including breaches of unsecured Protected Health Information as required at 45 CFR §164.410, and security incident of which it becomes aware;
- (d) Business Associate agrees in accordance with 45 CFR § 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- (e) If a breach of unsecured protected health information occurs at or by Business Associate, the Business Associate must notify covered entity following the discovery of the breach without unreasonable delay and, in all cases within 60 days from the discovery of the breach. The Business Associate shall provide the Covered Entity with the identification of each individual affected by the breach as well as any information required to be provided by the Covered Entity in its notification to affected individuals. Business Associate shall comply with all regulations issued the Department of Health and Resources and applicable state agencies regarding breach notification to Covered Entity.
- (f) Business Associate agrees to ensure that any agent, including subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to protected health information.
- (g) Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR § 164.528;
- (h) Business Associate agrees to make any amendment(s) to Protected Health Information in a designated record set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, in a prompt and reasonable manner.
- (i) Business Associate agrees to make its internal practices, books, and records, including policies and procedures and protected health information available to the Covered Entity and or the Secretary for purposes of determining compliance with the HIPAA Rules in a prompt and reasonable manner.
- (j) Business Associate shall, upon request with reasonable notice, provide Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding protected health information.
- (k) Business Associate agrees to provide to Covered Entity or an Individual, in a prompt reasonable manner, information collected in accordance with this Agreement, to permit Covered Entity to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

3. Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information as follows:

- (a) On behalf of, Covered Entity provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or business associate 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 business associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- (c) Business Associate may provide data aggregation services relating to the health care operations of the covered entity.

4. Provisions for Covered Entity

- (a) Covered Entity shall notify Business Associate of any restrictions or limitations(s) on the use of disclosure of Protected Health Information that covered entity has agreed to or is required to abide by under 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.
- (b) Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. Nothing in this paragraph shall restrict the ability of Business Associate to use or disclose PHI as set forth in the paragraph C.2.herein.

- 5. Remedies in Event of Breach.** Business Associate hereby recognizes that irreparable harm will result to Covered Entity and to the business of Covered Entity, in the event of breach by Business Associate any of the covenants and assurances contained in Paragraphs 2 or 3 of this agreement. As such, in the event of breach of any of the covenants and assurances contained in paragraphs 2 or 3 above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Paragraph 2 or 3. The remedies contained in this paragraph shall be in addition to (and not supersede) any action for damages and/or any other remedy Principal may have for breach of any part of this Agreement.

6. Term of Agreement and Termination

- (a) **Term.** The Term of this Agreement shall be effective as of the date given at the top of Page 1 herein, and shall terminate when all the Protected Health Information provided by Covered Entity to Business Associates, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- (b) **Termination for Cause.** Business Associate authorizes termination of this Agreement by covered entity, if Covered Entity determines Business Associate has violated a material term of the Agreement (and Business Associate has not cured the breach or ended the violation within the time specified by covered entity).
- (c) **Effect of Termination.**
 1. Upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
 2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon notification to Covered Entity that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

7. **Miscellaneous Terms**

- (a) **State Law.** If state law applicable to the relationship between Business Associate and Covered Entity contains additional or more stringent requirements than federal law for Business Associates regarding any aspect of PHI privacy, then Business Associate agrees to comply with the higher standard contained in applicable state law.
- (b) **Amendment.** The Agreement may only be modified through a writing signed by the Parties and, thus, no oral modification hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996.

Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

James Frosch
Administrator
220 N Ridgeway Dr
Cleburne, Texas 76033


- (c) **Notice to Business Associate.** Any notice required under this Agreement to be given Business Associate shall be made in writing to:


Fax: _____

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

Covered Entity

Business Associate

 Date: 9/30/13
Administrator
Family Medicine Associates, P.A.

 Date: 10-15-13
Title: Courtney Judge
Company: Johnson County

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