

**BUSINESS ASSOCIATE  
AND  
QUALIFIED SERVICE ORGANIZATION AGREEMENT**

**THIS BUSINESS ASSOCIATE AND QUALIFIED SERVICE ORGANIZATION AGREEMENT** ("BA/QSO Agreement" or "Agreement") is between Mental Health Crisis Center of Lancaster County ("Covered Entity"), and Region V Systems ("Business Associate"), and unless otherwise noted herein, is effective and made a part of the Network Provider Contract between the parties as of the effective date of the Network Provider Contract. Covered Entity and Business Associate are also referred to individually as "a party" or collectively, as "the parties." The parties intend by this BA/QSO Agreement to fully comply with all applicable state and federal laws governing their relationship(s) under the Network Provider Contract and the privacy and security of individually identifiable health information.

WHEREAS, Covered Entity provides custody, screening, emergency evaluation and crisis intervention to acutely mentally ill individuals, age 18 and older, who are detained under the Nebraska Civil Commitment Statutes; and

WHEREAS, Covered Entity, at times, provides substance abuse disorder diagnosis and/or referral for treatment, and in doing so, Covered Entity must comply with 42 USC §290dd-2 and 42 C.F.R. Part 2 as it relates to the confidentiality of substance abuse disorder patient records; and

WHEREAS, Business Associate is a Qualified Service Organization (QSO) under 42 C.F.R. Part 2 and must agree to certain mandatory provisions regarding the use and disclosure of substance abuse treatment information.

NOW THEREFORE, in consideration of their mutual promises herein and other good and valuable consideration, the parties agree as follows:

1. Definitions. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 160.103 and 164.501. For purposes of this Agreement:
  - A. Individual. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
  - B. Part 2 Program. "Part 2 Program" means a federally assisted program (federally assisted as defined in 42 C.F.R. §2.12(b) and "Program" as defined in this section).
  - C. Patient. "Patient" means any individual who has applied for or been given diagnosis, treatment, or referral for treatment for a substance use disorder at a Part 2 Program. Patient includes any individual who, after arrest on a criminal charge, is identified as an individual with a substance use disorder to determine that individual's eligibility to participate in a Part 2 Program, including current and former patients.
  - D. Patient Information. "Patient Information" shall mean all records or information of any type identifying Individuals served by Covered Entity, including without limitation all PHI related to such persons, including the name, address, social security number, fingerprints, photograph, or similar information by which the identity of a patient can be determined with reasonable accuracy either directly or by reference to other information. The term does not include a number assigned to a patient by a Part 2 Program, for internal use only by the Part 2 Program, if that number does not consist of or contain numbers (such as a social security, or driver's license number) that could be used to identify a patient with reasonable accuracy from sources outside of the Program. "Patient Information" is included within the term "protected health information" or "PHI."

- E. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R Part 160 and Part 164, Subparts A and E.
- F. Program or Programs.
- 1) An individual or entity (other than a general medical care facility) who holds itself out as providing, and provides, substance use disorder diagnosis, treatment or referral for treatment; or
  - 2) An identified unit within a general medical facility which holds itself out as providing, and provides, substance use disorder diagnosis, treatment or referral for treatment; or
  - 3) Medical personnel or other staff in a general medical care facility whose primary function is the provision of substance use disorder diagnosis, treatment or referral for treatment and who are identified as such providers.
  - 4) A Covered Entity may be a Program to the extent it meets the definition of "Program" as set forth herein.
- G. Protected Health Information. "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by BA from or on behalf of Covered Entity and includes any patient information as defined herein. Any references in this Agreement to PHI include Electronic PHI as that term is used in the Security Rule.
- H. Required By Law. "Required by Law" shall have the same meaning given to such term at 45 C.F.R. § 164.103.
- I. Secretary. "Secretary" shall mean the Secretary of the United States Department of Health and Human Services ("HHS") or the Secretary's designee.
- J. Security Incident. "Security Incident" shall have the same meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. § 164.304.
- K. Security Rule. "Security Rule" shall mean the Security Standards at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- L. Substance Use Disorder. "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using the substance despite significant substance-related problems such as impaired control, social impairment, risky use, and pharmacological tolerance and withdrawal. The term does not include tobacco or caffeine use.
- M. Transaction. "Transaction" shall have the same meaning given to such term under the Transaction Rule, including, but not limited to, 45 C.F.R. § 160.103.
- N. Transaction Rule. "Transaction Rule" shall mean the Standards for Electronic Transactions at 45 C.F.R. Parts 160 and 162.
- O. Qualified Service Organization. "Qualified Service Organization" means a person (an individual, partnership, corporation, federal, state or local government agency, or any other legal entity) which:
- 1) Provides services to a Program, such as data processing, bill collecting, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, or

services to prevent or treat child abuse or neglect, including training on nutrition and child care and individual and group therapy; and

- 2) Has entered into a written agreement with a Program under which that person:
  - (a) Acknowledges that in receiving, storing, processing or otherwise dealing with any patient records from the Program, it is fully bound by the regulations at 42 C.F.R. Part 2; and
  - (b) If necessary, will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the regulations at 42 C.F.R. Part 2.
  - (c) To the extent Business Associate provides services to a Covered Entity as a Program, Business Associate is also considered a Qualified Service Organization of Covered Entity under 42 C.F.R. Part 2.

2. Use of Protected Health Information.

- A. Compliance with 42 C.F.R. Part 2. Business Associate acknowledges and agrees that it is a QSO for the purpose of 42 C.F.R. Part 2, and that to the extent Business Associate receives, transmits, transports, stores, processes, or otherwise deals with any individually identifiable health information received from Covered Entity as a Program as defined herein, Business Associate is fully bound by the provisions of the federal regulations governing the confidentiality of substance use disorder patient records, 42 C.F.R. Part 2, and, if necessary, Business Associate agrees to resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the regulations at 42 C.F.R. Part 2. Notwithstanding any other language in this BA/QSO Agreement, Business Associate acknowledges and agrees that any patient information it receives from Covered Entity that is protected by 42 C.F.R. Part 2 is subject to protections that prohibit Business Associate from disclosing such information to agents or subcontractors without specific written consent of the subject individual.
- B. Compliance with HIPAA. Business Associate and Covered Entity acknowledge that they are subject to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, the HITECH provisions of the American Recovery and Reinvestment Act of 2009 ("ARRA"), and the regulations promulgated under those statutes ("HIPAA-HITECH Regulations").

3. Business Associate Obligations. BA agrees to:

- A. Maintain the absolute confidentiality of all protected health information and to use it only for the limited purpose for which it was disclosed to BA. Business Associate agrees to limit its uses and disclosures of PHI to the "minimum necessary" amount of information to accomplish the intended purpose of the use, disclosure, or request for information.
- B. Notify Covered Entity of any subpoena, discovery request or other demand for PHI in sufficient time for Covered Entity to make an appropriate objection. BA shall not disclose any PHI in response to such process without the permission of Covered Entity or a court order.
- C. Not further use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.
- D. Establish and maintain appropriate safeguards to prevent the use or disclosure of PHI other than as permitted under this Agreement or as provided in the Network Provider Contract. These safeguards will include appropriate administrative, physical and technical safeguards as required

by sections 164.308, 164.310, 164.312, and 164.316 of title 45, Code of Federal Regulations that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI or PHI that Business Associate creates, receives, maintains or transmits on behalf of the Covered Entity to the same extent as if Business Associate were a Covered Entity. BA further agrees to implement safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that BA creates, receives, maintains, or transmits on behalf of Covered Entity.

- E. Ensure that any subcontractors who create, receive, maintain, or transmit PHI on behalf of BA agree, in a signed, written agreement, to the same restrictions and conditions that apply to BA with respect to such information as provided in this Agreement.
- F. If BA maintains PHI in a designated record set, BA agrees to make available to Covered Entity such information to fulfill Covered Entity's obligations to provide access to, amendment of, or accounting for disclosures with respect to PHI in a designated record set, pursuant to any agreements with Covered Entities and the Privacy Rule, including, but not limited to, 45 C.F.R. §§ 164.524, 164.526, and 164.528.
- G. To the extent Covered Entity notifies BA of restrictions on uses or disclosures of PHI, including, but not limited to, restrictions on the use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by or required of Covered Entity, BA agrees to comply with such restrictions.
- H. Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by BA on behalf of Covered Entity available to Covered Entity, or at the direction of Covered Entity, to the Secretary, in a time and manner directed by the Covered Entity, for purposes of the Secretary determining Covered Entity's compliance with the Privacy and Security Rules.
- I. Immediately report to Covered Entity any Security Incident and any use or disclosure of PHI of which BA becomes aware that is not provided for or allowed by this Agreement including breaches of unsecured protected health information as required by 45 C.F.R. § 164.410. BA shall also promptly comply with any information requests and/or mitigation assistance requested by Covered Entity subsequent to such a report.
- J. To the extent BA is to carry out Covered Entity's obligation under this subpart, comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation.
- K. Mitigate, to the extent practicable, any harmful effect that is known to BA resulting from a use or disclosure of PHI by BA or one of its Subcontractors or agents in violation of the requirements of this Agreement.
- L. If BA creates or maintains PHI essential to the continuing operation of Covered Entity consistent with the Privacy and Security Rules' requirements in the event of a disaster, BA agrees to maintain a disaster recovery plan to protect and/or recover such records.

#### 4. Permitted Uses and Disclosures by Business Associate.

- A. Except as otherwise limited in this BA/QSO Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of Covered Entity related to services provided pursuant to this BA/QSO Agreement provided that such use or disclosure is consistent with the Network Provider Contract and would not violate the HIPAA-HITECH Regulations if done by the Covered Entity.

- 1) Except as otherwise limited herein, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the responsibilities of the Business Associate.
- 2) Except as otherwise limited herein Business Associate may disclose PHI for the proper management and administration of Business Associate provided that such disclosures are Required By Law or Business Associate obtains written 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 is being 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 used or disclosed in violation of this BA/QSO Agreement or of the HIPAA-HITECH Regulations.
- 3) Except as otherwise limited in this BA/QSO Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B). Business Associate may also use PHI for Transactions, provided that such use or disclosure would not violate the Transaction Rule if done by Covered Entity.

B. Covered Entity Obligations.

- 1) Covered Entity shall notify 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 Business Associate's use or disclosure of PHI.
- 2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- 3) Covered entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- 4) Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA-HITECH Regulations or as allowed by 42 C.F.R. Part 2 if done by Covered Entity.

C. Term of Obligations. The duties of the parties with respect to HIPAA-HITECH compliance and compliance with 42 C.F.R. Part 2 shall be effective for the respective terms of the parties' Network Provider Contract and this Agreement. This Agreement as to the Network Provider Contract shall terminate upon the earlier of the termination of Network Provider Contract when all of the PHI created or maintained by Business Associate or any of Business Associate's subcontractors with respect to the Network Provider Contract is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy the PHI, protections are extended to such information, in accordance with the termination provisions in this BA/QSO Agreement. To the extent that the parties enter into new Network Provider Contract after the date of this Agreement, the parties intend that this Agreement shall apply to the entirety of their business relationship to the extent the same involves the use or disclosure of PHI by Business Associate or one of its subcontractors.

D. Termination for Cause. If either party knows of a pattern of activity or practice by the other party that constitutes a material breach or violation of the other party's obligations under this Agreement, the non-breaching party shall either:

- 1) Provide written notice of the violation and an opportunity for the party in breach to cure the violation or end the violation within ten (10) calendar days of the notice or within such other time period specified by the non-breaching party. If the non-breaching party does not cure the breach or end the violation within the time specified herein, the non-breaching party may immediately terminate the Agreement and the Network Provider Contract under which Business Associate has been providing services;
  - 2) Immediately terminate the Agreement and the Network Provider Contract under which Business Associate has been providing services if the party in breach has violated a material term of this Agreement and cure is not feasible; or
  - 3) If neither termination nor cure is feasible, the non-breaching party shall report the violation to the Secretary.
- E. Effect of Termination. Upon termination of the Agreement, for any reason, Business Associate shall immediately return or destroy all PHI. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate. 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 and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible.
- F. References. A reference in this BA/QSO Agreement to a section in the HIPAA-HITECH Regulations, the HIPAA or HITECH statutes, or to any other statutory or regulatory authority means the section of the statute or regulation as in effect or as amended.
- G. Amendment. The parties agree to take such action as is necessary to amend this BA/QSO Agreement from time to time as necessary for the parties to comply with the requirements of HIPAA, HITECH, and the regulations promulgated thereunder and other applicable laws or regulations relating to the security or confidentiality of PHI. Upon either party's request, the other party agrees to promptly enter into negotiations concerning the terms of an amendment.
- H. Waiver. Any waiver by a party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach thereof, and the obligations of such party with respect thereto shall continue in full force and effect.
- I. Counterparts. This Agreement may be signed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- J. Interpretation. Any ambiguity herein shall be resolved to permit the parties to comply with HIPAA, HITECH and the regulations promulgated thereunder, and 42 C.F.R. Part 2
- K. No Third-Party Rights. This Agreement is intended for the sole benefit of Business Associate and Covered Entity and does not create any third-party beneficiary rights.
- L. Notices. All notices, requests, and demands or other communications to be given under this BA/QSO Agreement to a party shall be made as provided in the parties' Network Provider Contract.
- M. Survival. The respective rights and obligations of the parties shall survive the termination or expiration of the Network Provider Contract or of this Agreement to the extent that Business Associate or one of its subcontractors continues to possess, control or otherwise maintain PHI of the Covered Entity.

IN WITNESS WHEREOF, the parties have signed this BA/QSO Agreement to be effective as of the effective date(s) of the parties' Service Agreement(s).

COVERED ENTITY

BUSINESS ASSOCIATE

Mental Health Crisis Center of Lancaster County

Region V Systems

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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