Nebraska Department of Health
and Human Services

MASTER INTERAGENCY / BUSINESS ASSOCIATE AGREEMENT

HIPAA CONTRACT / ATTACHMENT FOR
COMPLIANCE TO THE PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION

THIS BUSINESS ASSOCIATE AGREEMENT is made on behalf of one or several of the following State of Nebraska Department of Health and Human Services Agencies as designated below:

Division of Public Health, Division of Behavioral Health, Division of Children and Family Services, Division of Medicaid & Long Term Care, Division of Developmental Disabilities, Division of Veteran's Homes and represented herein collectively or singularly as the "Department of Health and Human Services"

Represented herein collectively or singularly as the "Department of Health and Human Services" (DHHS, also hereinafter referred to as "Covered Entity"), with offices situate within the Nebraska State Office Building, 301 Centennial Mall, Lincoln, Nebraska, 68509, and Boys and Girls Home of Nebraska, PO Box 1197, Sioux City, IA 51102-1197 (hereinafter also referred to as "Business Associate") BAC-8272009-931.

Preamble

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") constitutes a non-exclusive agreement between Covered Entity, and the Business Associate named above.

The purpose of this Agreement is to authorize the Business Associate to use and disclose to specifically identified entities Protected Health Information as more fully described in this Agreement and in the attached Scope-of-Work.

The Covered Entity and Business Associate, as defined in section 45 CFR Part 160, Subpart A §160.103 of the HIPAA Final Privacy Rule, have entered into this Business Associate Agreement to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Final Privacy and Security Rule requirements for such an agreement, as well as our duty to protect the confidentiality and integrity of Protected Health Information (PHI) as required by the HIPAA regulations, Covered Entity policy, professional ethics, and accreditation requirements. Parties executing this Agreement understand that they mutually agree to comply with the provisions of the regulations implementing HIPAA.

The Covered Entity and the Business Associate may be parties to existing contracts that involve duties and obligations regulated by HIPAA and may enter into other such contracts in the future. This Agreement is intended to amend all such existing contracts and to be incorporated into all such future contracts between the parties. The purpose of the Scope-of-Work Attachment is to identify specific requirements in such contracts for the safeguarding of Protected Health information and to identify any procedures necessary to the work performed on behalf of the Covered Entity by the Business Associate that is unique to its operation involving the use and disclosure of Protected Health Information.

This Agreement will have, at a minimum, the following attachments:

- Scope-of-Work Attachment;
- ~~Exhibit A. Workforce Confidentiality Agreement.~~ N/A JA

This Agreement may include the following attachments:

- If this Agreement involves the use of Electronic Transactions regulated by HIPAA, 45 CFR Parts 160 and 162, then a Trading Partner Attachment must be included to facilitate the provision of billing, processing, collecting, modifying or transferring of Protected Health Information in agreed formats and to assure that such uses and disclosures comply with relevant laws, regulations and standards.
- Other attachments as appropriate and mutually agreed between the parties.

NOW THEREFORE, the parties intending to be legally bound agree to the following General Conditions:

I. Definitions.

As used in this Agreement the terms below shall have the following meanings:

a) **Business Associate:** A Business Associate means, with respect to a Covered Entity, a person or entity, other than a members of the Covered Entity's workforce, that performs or assists in the performance of a function or activity on behalf of the Covered Entity, involving the use or disclosure of Individually Identifiable Health Information, including claims processing or administration, data analysis, data administration, utilization review, quality assurance, billing, benefit management, practice management or repricing; or any other function or activity regulated by the HIPAA standards.

b) **Covered Entity:** 1) All healthcare providers who transmit any Protected Health Information electronically in connection with a transaction covered by the HIPAA regulations; 2) All health plans. 3) All health care clearinghouses. DHHS consisting of the agencies of Division of Public Health, Division of Behavioral Health, Division of Medicaid and Long Term Care, Division of Children and Family Services, Division of Developmental Disabilities, Division of Veteran's Homes is a Covered Entity. Covered Entities are accountable for Protected Health Information under the Final Privacy and Security Rule

c) **Health Care Provider:** A provider of medical or health services and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.

d) **Individually Identifiable Health Information**: Information that is a subset of health information, including demographic information collected from an individual, and that: 1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and 2) relates to the past, present or future physical or mental health or condition of an individual; or the past, present or future payment for the provision of health care to an individual; and 3) identifies the individual or with respect to which there is a reasonable basis to believe that information can be used to identify the individual.

e) **Protected Health Information:** Individually Identifiable Health Information that is transmitted by electronic media, maintained in any medium as described in the Privacy standards §162.103; or transmitted or maintained in any other form or medium. Protected Health Information excludes individually identifiable health information in: 1) education records covered by the Family Educational Rights and Privacy Act, as amended 20 U.S.C. 1232g; 2) records described at 20 U.S.C. 1232g (a)(4)(B)(iv); and 3) employment records held by a Covered Entity in its role as an employer.

f) **Response Date Reference:** All Agreement compliance dates are considered to be elapsed time in calendar days.

g) **Corrective Action Plan:** A written plan of correction, developed by the Business Associate that outlines the actions the Business Associate must take to address the contract performance compliance issues. The plan is the basis for a written assurance that the original conditions that caused or allowed unauthorized use and disclosure have been remediated.

h) **Any Terms Used:** Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms when they are used in 45 CFR §164.501, §164.304 and §160.103 of the HIPAA Final Privacy and Security Rule.

II. Performance

1. The specific work that is performed by the Business Associate on behalf of the Covered Entity involving the minimum necessary use and disclosure of Protected Health Information for the performance of this Agreement is presented in the attached "Scope-of-Work".

2. The Scope-of-Work identifies, defines and delineates the Covered Entity and Business Associate's contracted performance responsibilities in this Agreement, existing contracts or any future contract that involves the Business Associate's use and disclosure of Protected Health Information (as identified within existing or future contracts) while performing a function on behalf of the Covered Entity.

3. The specific functions of performance and the authorized individuals or subcontractors is presumed to be identified within this Agreement, existing contracts or any future contract. Existing or future associated contract deliverables are considered unique and applicable to this Agreement's performance.

4. Based upon the written assurances specified in Section IV of this Agreement, the performance of work under this Agreement, existing and future contracts is considered to be in compliance with the HIPAA regulations regarding use, disclosure and safeguarding of the Protected Health Information involved in the performance of work in this Agreement and any associated contracts.

III. Notices.

1. Written notices to the Covered Entity concerning performance of this Agreement, or amendments shall be sent through U.S. Postal Service, First Class Mail, pre-paid, to the attention of:

   1.1 Contact: Jon A. Grubb, HIPAA Privacy Office, P.O. Box 95026, Lincoln, NE 68509-5026, 402-471-1076.

2. Written notices to the Business Associate concerning performance of this Agreement, or amendments shall be sent through U.S. Postal Service, First Class Mail, pre-paid, to the attention of:

   2.1 Contact: Jeff Hackett, Administrator, P. O. Box 1197, Sioux City, IA 51102, 712-293-4700

3. When either party changes the contact or the contact's address, they shall give the other party written notice of the change.

4. Notices shall be deemed received within three days after the date of mailing.

IV. Special Provisions to General Conditions:

1. Assurance of the Confidential Use and Disclosure of Protected Health Information.

1.1 Use of Protected Health Information. Business Associate shall not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as required by law. Business Associate may use Protected Health Information for the purposes of managing its internal business processes relating to its functions and performance under this Agreement.

1.2 Covered Entity authorizes the use and disclosure of Protected Health Information by the Business Associate as follows:

1.2.1 *To identified individuals and entities:* Business Associate's employees, agents and subcontractors associated with the performance of this specific Agreement and other existing or future contracts involving the use and disclosure of Protected Health Information that are deemed minimally necessary to perform the work as identified in the attached Scope-of-Work; and,

1.2.2 *For the purposes of:* Business Associate's performance of work on behalf of the Covered Entity as specified in this Agreement and any existing or future contracts of this Agreement's attached Scope-of-Work.

1.3 Disclosure to Third Parties. Business Associate shall ensure that any of its agents and subcontractors to whom it provides Protected Health Information received from Covered Entity (or created by or received from the Business Associate on behalf of Covered Entity) agree to the same restrictions, and conditions relating to the, confidentiality, care, custody, and minimum use of Protected Health Information that apply to Business Associate in this Agreement.

1.4 Disclosure to the Workforce. Business Associate shall not disclose Protected Health Information to any member of its workforce except to those persons who have been authorized access to this information.

1.5 Disclosure and Confidentiality. Business Associate may maintain a confidentiality agreement with the individuals of its workforce, who have access to Protected Health Information. This confidentiality agreement should be substantially similar to the sample Authorized Workforce Confidentiality Agreement included as Exhibit "A" to this Agreement.

1.6 Minimum Necessary Standard. Pursuant to 45 CFR §164.502(b); §164.514(d): The Business Associate shall make reasonable efforts to limit the use and disclosure of Protected Health Information to the minimum necessary to accomplish the intended purpose of the use or disclosure. The Business Associate must limit access to those persons within its workforce, agents or subcontractors who are authorized and need the information in order to carry out their duties, and provide access only to the category of information that is required.

2. Assurance of Reasonable Safeguards of Protected Health Information.

2.1 Safeguards. Business Associate shall implement and maintain appropriate administrative, physical and technical safeguards to prevent access to and the use and disclosure of Protected Health Information, other than as provided for in this Agreement. The Business Associate agrees to assess potential risks and vulnerabilities to the individual health data in its care and custody and develop, implement and maintain reasonable security measures.

3. Assurance of Accounting for Disclosures of Protected Health Information.

3.1 Accounting for Protected Health Information Disclosures. Business Associate shall maintain an accounting of disclosures of Protected Health Information as required by the HIPAA regulations.

3.2 Disclosure to the U.S. Department of Health and Human Services (DHHS). Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from Covered Entity (or created or received by Business Associate on behalf of Covered Entity) available to the Secretary of DHHS or its designee for purposes of determining Covered Entity's compliance with HIPAA and with the Privacy and Security regulations. Business Associate shall provide Covered Entity with copies of any information it has made available to DHHS under this section of this Agreement.

4. Assurance for the Reporting and Remediation of Known Unauthorized Use and Disclosure of Protected Health Information.

4.1 Reporting of unauthorized use and disclosures and remediation of risk conditions. Business Associate shall report to Covered Entity within fifteen (15) days from when it becomes aware of, any unauthorized use or disclosure of Protected Health Information made in violation of this Agreement or the HIPAA regulations, including any security incident that may put electronic Protected Health Information at risk. Business Associate shall, as instructed by Covered Entity, take immediate steps to mitigate any harmful effect of such unauthorized disclosure of Protected Health Information pursuant to the conditions of this Agreement through the preparation and completion of a written Corrective Action Plan subject to the review and approval by the Covered Entity.

5. Assurance of Access and Amendments to Protected Health Information.

5.1 Right of Access. Business Associate shall make an individual's Protected Health Information available to the Covered Entity within fifteen (15) days of notice under this Agreement.

5.2 Right of Amendment. Business Associate shall make an individual's Protected Health Information available to the Covered Entity for amendment and correction within fifteen (15) days of notice under this Agreement, and shall incorporate any amendments or corrections to Protected Health Information within fifteen (15) days of notice under this Agreement that such amendments or corrections are approved.

6. Termination and Duties Upon Termination.

6.1 Termination. Covered Entity may immediately terminate this Agreement and any and all associated Agreements identified in the Scope of Work if Covered Entity determines that the Business Associate has violated a material term of a performance condition of this Agreement.

6.2 Covered Entity, at its sole discretion, may choose to issue a plan of correction to the Business Associate to set the conditions for remediation of any material breach of performance in an effort to mitigate the cause for breach or consequent termination. The plan of correction issued by the Covered Entity under this subsection shall supercede the provisions of any Corrective Action Plan prepared by the Business Associate that are in conflict.

6.3 This Agreement may be terminated by either party with not less than fifteen (15) days prior written notice to the other party, which notice shall specify the effective date of the termination; provided whenever a notice provision for termination in any associated Agreement identified in the Scope of Work specifies a longer notice period for termination, the longer period shall apply; provided further that any termination of this Agreement shall not affect the respective obligations or rights of the parties arising under any existing contracts or otherwise under this Agreement before the effective date of termination.

6.4 Within thirty (30) days of expiration or termination of this Agreement, or as agreed, unless Business Associate requests and Covered Entity authorizes a longer period of time, Business

Associate shall return or at the written direction of the Covered Entity destroy all Protected Health Information received from Covered Entity (or created or received by Business Associate on behalf of Covered Entity) that Business Associate still maintains in any form and retain no copies of such Protected Health Information. Business Associate shall provide a written certification to the Covered Entity that all such Protected Health Information has been returned or destroyed (if so instructed), whichever is deemed appropriate. If such return or destruction is determined by the Covered Entity to be infeasible, Business Associate shall use such Protected Health Information only for purposes that makes such return or destruction infeasible and the provisions of this Agreement shall survive with respect to such Protected Health Information.

6.5 Upon termination of this agreement for cause of violation of the performance conditions of this Agreement, or the HIPAA Privacy Rule standards for use and disclosure, all associated existing contracts as identified or referred to in the Scope of Work Attachment are deemed terminated, except as provided in 45 CFR 164.504(e)(1)(ii)(B).

7. Amendment.

7.1 Amendment. Upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information required by the HIPAA regulations, or the publication of any decision of a court of the United States or of the State of Nebraska relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, Covered Entity may provide written notice to the Business Associate to amend this Agreement in such a manner as Covered Entity determines necessary to comply with such law or regulation. If Business Associate disagrees with any such amendment, it shall so notify Covered Entity in writing within fifteen (15) days of Covered Entity's notice. If the parties are unable to agree on an amendment within fifteen (15) days thereafter, either of them may terminate this Agreement by reasonable written notice to the other.

8. Term of the Agreement.

8.1 The term of this Agreement shall commence April 14, 2003 or upon the signature of both parties, whichever is later, and continue for the longest applicable period , as follows:

8.1.1 If this Agreement is attached to any existing contract through an amendment process, then the term of the Agreement shall coincide with the term of the existing contract.

8.1.2 If this Agreement is attached to and incorporated into any renegotiated existing contract, or new contract as identified within the Scope-of-Work Attachment to this Agreement, then the term of the Agreement shall coincide with the term of the renewed contract or the new contract.

8.1.3 If this Agreement is not attached to or incorporated into any other contract between the Covered Entity and the Business Associate, then the term of the Agreement shall be from the commencement date for a period of five (5) years.

9. Hold Harmless.

9.1 The Covered Entity agrees to hold the Business Associate harmless for all loss or damage sustained by any person as a direct result of the negligent or willful acts by the Covered Entity, its employees or agents in the performance of this Agreement, including all associated costs of defending any action.

9.2 Business Associate agrees to hold the Covered Entity harmless for all loss or damage sustained by any person as a direct result of the negligent or willful acts by the Business Associate, its employees or agents in the performance of this Agreement, including all associated costs of defending any action.

10. Execution.

EACH PARTY has caused this Agreement to be properly executed on its behalf as of the date signed.

For: Covered Entity

State of Nebraska
Department of Health and Human Services

1. Todd L Reckling **Date:** 09/03/2009

Todd Reckling, Children and Family Services Director

For: Business Associate

Date 8-31-09

Jeff Hackett, Administrator

Concurrence By:

_____

_____

[Name and title of the *specific DHHS agency division director, program manager or 24-hour facility CEO(Agreement originator)*]

Attachments: Scope-of-Work
Exhibit A

State of Nebraska
Department of Health and Human Services

HIPAA Business Associate Agreement
SCOPE-OF-WORK ATTACHMENT

THIS Scope-of-Work ATTACHMENT supplements and is incorporated into, and considered part of the Business Associate Agreement (herein referred to as "Agreement") by and between the Nebraska Department of Health and Human Services (consisting of the agencies of Division of Public Health, Division of Behavioral Health, Division of Children and Family Services, Division of Medicaid & Long Term Care, Division of Developmental Disabilities, Division of Veteran's Homes and represented herein collectively or singularly as the "Department of Health and Human Services" (DHHS also hereinafter referred to as "Covered Entity"), and Boys and Girls Home of Nebraska, PO Box 1197, Sioux City, IA 51102-1197(hereinafter also referred to as "Business Associate") BAC-8272009-931 .

I. GENERAL CONDITIONS

1. Covered Entity agrees to provide the following:

   1.1 Covered Entity will provide technical assistance directly to assist Business Associate with the use of any electronic formats for the transmission of Protected Health Information, such as magnetic tape. Covered Entity will provide advance notice whenever possible before making changes to the format or to the codes used in information processing.

2. Business Associate agrees to the following:

   2.1 The Business Associate must adhere to all relevant confidentiality and privacy laws, regulations, and contractual provisions as provided within the Agreement.

   2.2 The Business Associate shall have in place reasonable administrative, technical, and physical safeguards to ensure security and confidentiality of Protected Health Information.

   2.3 A Corrective Action Plan (CAP) will be developed by the Business Associate to address and remediate any condition of contractual non-performance.

II. SPECIAL PROVISIONS TO GENERAL CONDITIONS

This Scope-of-Work Attachment amends any contract between the parties listed in this attachment and all other existing contracts between the parties that involve the performance of work on behalf of the Covered Entity and that involve the processing, handling, use or disclosure of Protected Health Information. This Scope-of-Work Attachment shall also incorporate the provisions of the Agreement and this Attachment into all renewals of such existing contracts and into all new contracts between the parties that involve performance of work on behalf of the Covered Entity and that involve the processing, handling, use or disclosure of Protected Health Information.

[Specifics to be included in this Scope of Work Attachment are:]

- ❑ Contract Name: Service Coordination and Service Provision for Child Welfare and Juvenile Services Contract

This agreement applies within all service areas with Nebraska Department of Health & Human Services. The contractor provides services on behalf of Nebraska Department of Health and Human Services