



Business Associate Agreement

This Agreement is between the Harris County Medical Society ("HCMS"), 1515 Hermann Drive, Houston, Texas 77004 and _____ (Physician Name) ("Physician"), collectively "the Parties." This Agreement is to memorialize the relationship between the Parties and the terms that govern the release of Protected Health Information to HCMS and the use and disclosure of Protected Health Information by HCMS consistent with HIPAA and the HITECH Act and the regulations promulgated thereunder.

Recitals

WHEREAS, Physician is a Covered Entity as the term is defined in the HIPAA Rules at 45 CFR § 160.103;

WHEREAS, HCMS may provide certain services in connection with its Payment Advocacy and/or Health Care Quality Incentive programs (i.e., BlueCross and BlueShield of Texas Bridges to Excellence program), to or on behalf of Physician that involve the receipt of Protected Health Information from Physician or the creation, receipt, maintenance or transmission of Protected Health Information on behalf of Physician;

WHEREAS, HCMS acts as a Business Associate, as the term is defined in the HIPAA Rules at 45 CFR § 160.103, of Physician in performing those Payment Advocacy and/or Health Care Quality Incentive program services that HCMS provides to or on behalf of Physician that involve the receipt of Protected Health Information from Physician or the creation, receipt, maintenance, or transmission of Protected Health Information on behalf of Physician;

WHEREAS, HIPAA Rules provide that a Covered Entity may disclose Protected Health Information to a Business Associate and may allow a Business Associate to create, receive, maintain, or transmit Protected Health Information on its behalf, if the Covered Entity obtains satisfactory assurances that the Business Associate will appropriately safeguard the information through a written agreement that meets certain requirements;

WHEREAS, HCMS and Physician seek to satisfy the applicable requirements of HIPAA, HITECH Act, and HIPAA Rules relating to such written agreements;

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

1. Definitions

As used in this Agreement, the following capitalized words shall have the meanings set forth below.

- a. Business Associate. "Business Associate" shall have the same meaning as the term "business associate" in 45 CFR §160.103.
- b. Covered Entity. "Covered Entity" shall have the same meaning as the term "covered entity" in 45 CFR §160.103.
- c. Data Aggregation. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR §164.501.
- d. Designated Record Set. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR §164.501.
- e. Electronic Protected Health information. "Electronic Protected Health Information" shall have the same meaning as the term "electronic protected health information" in 45 CFR §160.103.
- f. Health Care Operations. "Health Care Operations" shall have the same meaning as the term "Health Care Operations" in 45 CFR §164.501.
- g. HIPAA. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- h. HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and 164.
- i. HITECH Act. "HITECH" or "HITECH Act" shall mean the Health Information Technology for Economic and Clinical Health Act, which is Division A, Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.
- j. HITECH Standards. "HITECH Standards" shall mean the Privacy, Security and Breach Notification provisions applicable to a Business Associate under Subtitle D of the HITECH Act and any regulations promulgated thereunder.
- k. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- l. Notice of Privacy Practices. "Notice of Privacy Practices" shall mean the notice of privacy practices described in 45 CFR §164.520.
- m. Protected Health Information. "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR §160.103, limited to the information received by HCMS from Physician or created, received, maintained, or transmitted by HCMS on behalf of Physician.
- n. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.103.
- o. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- p. Security Incident. "Security Incident" shall have the same meaning as the term "security incident" in 45 CFR §164.304.

- q. Subcontractor. “Subcontractor” shall have the same meaning as the term “subcontractor” in 45 CFR §160.103.
- r. Unsecured Protected Health Information. “Unsecured Protected Health Information” shall have the same meaning as “unsecured protected health information” in 45 CFR §164.402, limited to the protected health information received by HCMS from Physician or created, received, maintained or transmitted by HCMS on behalf of Physician.

2. Obligations and Activities of HCMS

- a. HCMS agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law.
- b. HCMS agrees to use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information, to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement.
- c. HCMS agrees to report to Physician any use or disclosure of Protected Health Information not provided for by this Agreement of which it becomes aware, including any Breach of Unsecured Protected Health Information as required at 45 CFR §164.410, and any Security Incident of which it becomes aware. Subject to the law enforcement delay exception contained in 45 CFR §164.412, HCMS agrees to notify Physician without unreasonable delay, but in no event later than 45 calendar days, following the discovery of a Breach of Unsecured Protected Health Information and in accordance with 45 CFR §164.410. In this paragraph, “Breach” shall have the same meaning as the term “breach” in 45 CFR §164.402.
- d. In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, HCMS agrees to ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of HCMS agree to the same restrictions, conditions, and requirements that apply to HCMS with respect to such information.
- e. HCMS agrees to make available Protected Health Information in a Designated Record Set to Physician as necessary to satisfy Physician’s obligations under 45 CFR §164.524. Within three (3) business days of receipt of a written request from Physician, HCMS shall provide Physician with access to the Protected Health Information maintained in a Designated Record Set by HCMS, during regular business hours at the HCMS building in Houston, Texas or, if directed by Physician, send a copy of the PHI to Physician in those circumstances where Physician does not have possession of the PHI. The requirements of this paragraph do not apply if the Protected Health Information maintained by HCMS in a Designated Record Set merely duplicates information held by Physician or if HCMS does not maintain the Protected Health Information in a Designated Record Set.
- f. In the event that HCMS receives a request for access to Protected Health Information in a Designated Record Set directly from an Individual, HCMS shall forward the request within three (3) business days to Physician for Physician to fulfill.

- g. HCMS agrees to make any amendment(s) to Protected Health Information maintained by HCMS in a Designated Record Set as directed or agreed to by Physician pursuant to 45 CFR § 164.526, at the written request of Physician. HCMS will make available PHI maintained by HCMS in a Designated Record Set for amendment and incorporate any amendments to PHI maintained by HCMS in a Designated Record Set in accordance with 45 CFR §164.526 in a reasonable amount of time after receipt of written notification of the need for an amendment from Physician.
- h. HCMS will forward to Physician any request for amendment of PHI in a Designated Record Set that HCMS receives directly from an Individual within five (5) business days of receipt of the request by HCMS. Physician is responsible for acting on any forwarded request in accordance with 45 CFR §164.526.
- i. Unless otherwise protected or prohibited from discovery or disclosure by law, HCMS agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from Physician, or created or received by HCMS on behalf of Physician available to the Secretary for the purpose of determining Physician's compliance with the HIPAA Rules.
- j. HCMS agrees to document and maintain documentation of such disclosures of Protected Health Information and information related to such disclosures as would be required for Physician to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528 and HITECH §13405(c), when HITECH §13405(c) becomes effective for Physician. HCMS will make such information available to Physician by forwarding any such information to Physician within a reasonable amount time after receipt of a written request for the information from Physician as necessary to permit Physician to respond to a request by an Individual for an accounting of Protected Health Information in accordance with 45 CFR §164.528 and HITECH §13405(c).
- k. Physician hereby elects to provide the accounting required by HITECH §13405(c) in accordance with HITECH §13405(c)(3)(A), rather than HITECH §13405(c)(3)(B). In the event that an Individual requests the accounting of disclosures of Protected Health Information directly from HCMS, HCMS shall within five (5) business days forward such request to Physician. Physician shall have the responsibility of responding to forwarded requests.
- l. HCMS will comply with the HITECH Standards to the extent that is required to comply by law.
- m. To the extent that HCMS is to carry out one or more of Physician's obligation(s) under Subpart E of 45 CFR Part 164, HCMS agrees to comply with the requirements of Subpart E that apply to Physician in the performance of such obligation(s).

3. Permitted Uses and Disclosures by HCMS

General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, HCMS may use or disclose Protected Health Information on behalf of, or to provide services to, Physician for the following purposes:

To assist Physician in billing and obtaining payment from third party payers or carriers for health care provided to Physician's patients;

To assist Physician in obtaining any necessary approval from third party payers or carriers for health care recommended by Physician;

To assist Physician in the administration of Physician's claim processing and submission;

To assist Physician in understanding state and federal laws and regulations that may affect payment for the provision of health care or for Health Care Operations of Physician;

To assist Physician in practice management as it relates to billing;

To assist Physician in billing;

To perform data analysis on Physician's behalf via the HCMS Payment Advocacy and Health Care Quality Incentive program reports, if any;

To assist Physician in appeals with third party payers or carriers for health care provided to Physician's patients, Department of Health and Human Services (DHHS) administrative procedures, compliance disputes, the Texas Medical Board, or other such entities or peer review;

To assist Physician in obtaining payment from third party payers or carriers through peer review assessments of medical necessity and appropriate documentation and coding of claims;

To assist Physician in data analysis of patient clinical and billing data as it may relate to comparisons, tiering, measuring, ranking, or classification of physician performance or services by third party payers, insurance carriers, or other entities; and

To assist Physician in identification and understanding episodes of care as it may relate to comparisons, tiering, measuring, ranking, or classification of physician performance or services by third party payers, insurance carriers, or other entities.

To assist the Physician in submitting patient clinical data through various portals, registries, etc. for the opportunity to earn financial incentives for providing quality care based on guidelines of the different Health Care Quality Incentive programs .

To assist the Physician in the abstraction, evaluation and submission of patient clinical data from paper or electronic medical records to obtain incentive recognition, and the opportunity to earn financial incentives, based on valid statistical benchmarks of different Health Care Quality Incentive programs. HCMS may de-identify, in accordance with 45 CFR §164.514(a)-(c), PHI for its own use, analysis, and disclosure.

4. Specific Use and Disclosure Provisions

- a. HCMS may use or disclose Protected Health Information as Required by Law.
- b. HCMS agrees to make uses and disclosures of and requests for Protected Health Information consistent with Physician's minimum necessary policies and procedures.
- c. HCMS may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Physician, except for the specific uses and disclosures set forth in paragraphs (d), (e), and (f) of this Section below.
- d. HCMS may use Protected Health Information for the proper management and administration of HCMS or to carry out the legal responsibilities of HCMS.
- e. HCMS may disclose Protected Health Information for the proper management and administration of HCMS or to carry out the legal responsibilities of HCMS, provided that the disclosures are Required By Law, or HCMS obtains reasonable 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 purposes for which the information was disclosed to the person, and the person notifies HCMS of any instances of which it is aware in which the confidentiality of the information has been breached as provided in 45 CFR §164.504(e)(4)(ii)(B).
- f. HCMS may provide Data Aggregation services relating to the Health Care Operations of Physician.

Obligations of Physician

5. Provisions for Physician to Inform HCMS of Privacy Practices and Restrictions

- a. Physician shall notify HCMS of any limitation(s) in the Notice of Privacy Practices of Physician under 45 CFR § 164.520, to the extent that such limitation may affect HCMS's use or disclosure of Protected Health Information.
- b. Physician shall notify HCMS of any changes in, or revocation of, the permission by an Individual to use or disclose his or her Protected Health Information, to the extent that such changes may affect HCMS's use or disclosure of Protected Health Information.
- c. Physician shall notify HCMS of any restriction on the use or disclosure of Protected Health Information that Physician has agreed to or is required to abide by under 45 CFR § 164.522 or HITECH §13405(a), to the extent that such restriction may affect HCMS's use or disclosure of Protected Health Information.
- d. Physician shall only disclose to HCMS the minimum amount of Protected Health Information necessary to accomplish the purpose of the disclosure to HCMS in

accordance with 45 CFR §164.502(b) and HITECH §13405(b) and shall comply with applicable regulations and guidance by the Secretary issued with regard to minimum necessary requirements.

6. Permissible Requests by Physician

Physician shall not request HCMS to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Physician. Notwithstanding this Section, HCMS may use and disclose Protected Health Information for Data Aggregation or for the proper management and administration of HCMS and to carry out the legal responsibilities of HCMS, as otherwise permitted by this Agreement.

7. Term and Termination

- a. Term. The Effective Date of this Agreement shall be the last signature date of the Parties on this Agreement as set forth below. Subject to paragraphs (b) - (e) of this Section, the term of this Agreement shall be for one (1) year beginning on the Effective Date. This Agreement shall automatically renew for successive one (1) year terms, unless the Agreement is terminated as authorized in paragraphs (b) - (e) of this Section. This Agreement may be terminated as authorized in paragraphs (b) - (e) of this Section during any successive one (1) year term.
- b. Physician's Termination for Cause. HCMS authorizes immediate termination of this Agreement by Physician upon written notice to HCMS, if Physician determines HCMS has violated a material term of the Agreement and HCMS has not cured the breach or ended the violation within the time specified by Physician.
- c. HCMS's Termination for Cause. Physician authorizes immediate termination of this Agreement by HCMS upon written notice to Physician, if HCMS determines Physician has violated a material term of this Agreement.
- d. Automatic Termination. This Agreement automatically terminates if the Parties execute a subsequent Business Associate Agreement for the same services provided under this Agreement.
- e. Termination on Notice. This Agreement may be terminated by HCMS or Physician for any reason at any time upon 30 calendar days' written notice.
- f. Effect of Termination. Upon termination of this Agreement for any reason, HCMS, with respect to Protected Health Information received from Physician, or created, maintained, or received by HCMS on behalf of Physician, shall:
 1. Retain only that Protected Health Information that:
 - a. Is necessary for HCMS to continue its proper management and administration or to carry out its legal responsibilities; or
 - b. HCMS determines is infeasible to return or destroy;
 2. Return to Physician or destroy the remaining Protected Health Information that HCMS still maintains in any form and retain no copies;
 3. Continue to extend the protections of this Agreement, use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to

Electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this paragraph, for as long as HCMS retains the Protected Health Information;

4. Not use or disclose the Protected Health Information retained by HCMS other than for the purposes for which such Protected Health Information was retained and, with respect to PHI retained for the proper management and administration of HCMS or to carry out its legal responsibilities, subject to the same conditions as set out at Section 4(d) and (e) which applied prior to termination; and
5. Return to Physician or destroy the Protected Health Information retained by HCMS when:
 - a. The Protected Health Information is no longer needed by HCMS for its proper management and administration or to carry out its legal responsibilities, if this was the basis for the retention of the PHI; or
 - b. It becomes feasible to return or destroy the Protected Health Information if infeasibility was the basis for the retention of the PHI.

8. Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules 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 from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- c. Survival. The respective rights and obligations of HCMS under Section 7(f) of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- e. No Third Party Beneficiaries. Nothing express or implied in this agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. Authority to Bind. The person signing on behalf of Physician warrants that he or she has the legal authority to execute this Agreement.
- g. Entire Agreement. This Agreement constitutes the entire agreement between Physician and HCMS concerning the subject matter hereof, and supersedes all prior understandings, communications, and agreements, whether written or oral, between Physician and HCMS on this subject matter.
- h. Notice.
 1. Any notice or request required to be given by Physician to HCMS under this Agreement shall be made in writing to:

Carol Hampton, MHA
HIPAA Security Officer
Harris County Medical Society

1515 Hermann Drive
Houston, TX 77004

2. Any notice or request required to be given to Physician by HCMS under this Agreement shall be made in writing to:

_____ (name)
_____ (title)
_____ (address)

IN WITNESS WHEREOF, HCMS and Physician have duly executed this Agreement as signed below.

Harris County Medical Society

Physician

By: _____
Signature

Signature

Carol Hampton, MHA
Print Name

Print Name

Director, Payment Advocacy & Practice Management
Title

Title

Date

Date