

HIPAA BUSINESS ASSOCIATE AGREEMENT:

This HIPAA Business Associate Agreement ("Business Associate Agreement") is by and between the entity or entities identified on the signatory page ("Business Associate") and Delta Dental of Pennsylvania ("Delta Dental"). This Business Associate Agreement is effective on April 14, 2003, such other applicable compliance date, or date when Business Associate's services are engaged, whichever is later.

RECITALS

Whereas, the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, effective April 14, 2003, and related regulations require that contracts between covered entities and individuals or entities known as business associates comply with enumerated standards and requirements;

Whereas, Delta Dental is a covered entity under HIPAA;

Whereas, Business Associate performs services that makes it Delta Dental's business associate as described or defined under HIPAA;

Whereas, the purpose of this Business Associate Agreement is to satisfy the HIPAA standards and requirements;

Now therefore, in consideration of the mutual promises below, the Business Associate(s) and Delta Dental agree as follows:

SECTION 1 - DEFINITIONS

1.1 "HIPAA" shall mean the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 and related regulations, Title 45 Parts 160 and 164 of the Code of Federal Regulations, as amended from time to time.

1.2 "Protected Health Information" (PHI) shall have the same meaning as defined in HIPAA and shall apply to those individuals who are eligible and/or enrolled in the dental benefit programs administered by Delta Dental.

1.3 Terms used, but not otherwise defined, in this Business Associate Agreement shall have the same meaning as those terms have in HIPAA.

SECTION 2 - BUSINESS ASSOCIATE AGREEMENT

2.1 Permitted Uses and Disclosures.

a. Business Associate shall use and/or disclose PHI created on behalf of Delta Dental or received from Delta Dental in accordance with the uses and disclosures described in Exhibit A.

b. Business Associate shall not use or further disclose PHI other than as permitted or required by this Business Associate Agreement, any law or any regulation.

c. Except as otherwise limited by this Business Associate Agreement, Business Associate may use PHI for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities.

d. Except as otherwise limited in this Business Associate Agreement, Business Associate may disclose PHI for Business Associate's proper management and administration, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose 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 PHI has been breached.

2.2 Appropriate Safeguards. Business Associate agrees to use appropriate safeguards to prevent its use or disclosure of PHI other than as provided for by this Business Associate Agreement.

2.3 Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Business Associate Agreement.

2.4 Reporting of Disclosures of PHI. Business Associate shall report to Delta Dental any use or disclosure of PHI by Business Associate not provided for in this Business Associate Agreement of which the Business Associate becomes aware.

2.5 Agents and Contractors. Business Associate shall ensure that any agent or subcontractor to whom Business Associate discloses PHI agrees, in writing, to be bound by the same restrictions and conditions that apply to Business Associate through this Business Associate Agreement.

2.6 Access to PHI. Business Associate agrees to provide access, at Delta Dental's request and in the time and manner designated by Delta Dental, to PHI to Delta Dental or, as directed by Delta Dental, to an individual in order to meet the requirements under 45 CFR 164.524.

2.7 Amendment of PHI. Business Associate agrees to make any amendment(s) to PHI that Delta Dental directs or agrees to pursuant to 45 CFR 164.526 at the request of Delta Dental or an individual, and in the time and manner designated by Delta Dental.

2.8 Availability of Business Associate's Internal Practices, Books and Records. Business Associate agrees to make its internal practices, books and records, including policies and procedures and PHI, relating to its use and disclosure of PHI available to (1) the Secretary of Health and Human Services for purposes of determining Delta Dental's compliance with the HIPAA privacy standards and (2) Delta Dental for purposes of determining Business Associate's compliance with this Business Associate Agreement.

2.9 Documentation of Disclosures. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Delta Dental to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

2.10 Accounting of Disclosures. Business Associate agrees to provide to Delta Dental or an individual, in time and manner designated by Delta Dental, information collected in accordance with Section 2.9 of this Business Associate Agreement, to permit Delta Dental to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

2.11 Delta Dental Responsibilities. Delta Dental shall:

a. Provide Business Associate with the notice of any limitation(s) in its notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation(s) may affect Business Associate's use or disclosure of PHI.

b. Provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures of PHI.

c. Notify Business Associate of any restriction to the use or disclosure of PHI that Delta Dental has agreed to in accordance with 45 CFR 164.522, to the extent that such limitation(s) may affect Business Associate's use or disclosure of PHI.

2.12 Term and Termination of the Agreement.

a. Term. The term of this Business Associate Agreement shall be effective on the date set forth in the first paragraph and shall continue until the Business Associate ceases to perform services for Delta Dental.

b. Termination for Cause. Delta Dental may terminate this Business Associate Agreement and the Business Associate's services upon Delta Dental's knowledge that the Business Associate has materially breached this Business Associate Agreement. In lieu of termination, Delta Dental may provide an opportunity for Business Associate to cure the breach or end the violation. However, Delta Dental may terminate this Business Associate Agreement and the Business Associate's services if Business Associate does not cure the breach or end the violation within the time specified by Delta Dental. Delta Dental may immediately terminate this Business Associate Agreement and the Business Associate's services if Business Associate has breached a material term of this Business Associate Agreement and cure is not possible. If neither termination nor cure is feasible, Delta Dental may report the violation to the Secretary of Health and Human Services.

c. In the event of any termination of this Business Associate Agreement, Business Associate shall return or destroy all PHI that Business Associate still maintains in any form and shall retain no copies. If return or destruction is not feasible because such PHI is necessary to fulfill Business Associate's legal responsibilities or other management and administrative purposes, Business Associate shall retain the PHI and shall continue to protect the confidentiality of PHI as required by this Business Associate Agreement. Business Associate shall limit any use or disclosure of PHI to those purposes that make the return or destruction of PHI infeasible. Business Associate agrees to recover any PHI in the possession of its agents or subcontractors and to retain, return or destroy such PHI, as applicable.

d. The following Sections shall survive termination of this Business Associate Agreement: 2.6, 2.7, 2.8, 2.9, 2.10, 3.2 and 3.3.

2.13 Security Rule Provisions. Business Associate will comply with the following provisions by April 21, 2005, or such other applicable compliance date. For purposes of this Section, "electronic protected health information" (ePHI) shall have the same meaning as defined in HIPAA. The Business Associate will:

a. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, receives, maintains, or transmits on behalf of Delta Dental as required by 45 CFR 164.314;

b. Ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect it;

c. Report to Delta Dental any security incident of which it becomes aware;

d. Authorize termination of the Business Associate Agreement by Delta Dental, if Delta Dental determines that the Business Associate has violated a material term of the Business Associate Agreement.

SECTION 3 – GENERAL

3.1 Amendment to Business Associate Agreement. Business Associate and Delta Dental agree to amend this Business Associate Agreement as necessary to comply with federal or state laws or regulations relating to the administrative simplification provisions of HIPAA.

3.2 Indemnification by Delta Dental. Delta Dental agrees to indemnify, defend and hold harmless the Business Associate and its employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as “Indemnified Party,” against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Delta Dental's breach of Section 2.11 of this Business Associate Agreement. Accordingly, on demand, Delta Dental shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from Delta Dental's breach hereunder. Delta Dental's obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Business Associate Agreement for any reason.

3.3 Indemnification by Business Associate. Business Associate agrees to indemnify, defend and hold harmless Delta Dental and its employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as “Indemnified Party,” against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with the Business Associate's breach of Section 2 of this Business Associate Agreement. Accordingly, on demand, the Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Business Associate's breach hereunder. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Business Associate Agreement for any reason.

3.4 No Third Party Beneficiary. Nothing express or implied in this Business Associate Agreement is intended to confer, nor shall anything in this Business Associate Agreement confer, upon any person other than the parties to this Business Associate Agreement and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.

IN WITNESS WHEREOF, Business Associate and Delta Dental have duly executed this Business Associate Agreement as of the date listed below.

BUSINESS ASSOCIATE:

(Print name of firm or agency, if applicable)

(Address)

Signature of qualifying officer: _____

Print Name: _____


Print Title: _____

Signature of producing agents:

Print name of producing agents:

Date: _____

DELTA DENTAL OF PENNSYLVANIA

Signature: 

Title: President

EXHIBIT A TO HIPAA BUSINESS ASSOCIATE AGREEMENT:

Permitted Uses and Disclosures:

Except as otherwise limited in this Business Associate Agreement, Business Associate shall use and disclose PHI:

- A. To perform activities or services for, or on behalf of, Delta Dental, provided that such use or disclosure would not violate HIPAA if done by Delta Dental.
- B. As otherwise required or permitted by HIPAA or federal or state law.
- C. To report violations of law to appropriate federal or state authorities, consistent with 45 CFR 164.502 (j)(1).
- D. As otherwise requested by Delta Dental that is not in violation of HIPAA.