

NON-DISCLOSURE AND USE OF INFORMATION AGREEMENT

This Non-Disclosure and Use of Information Agreement (“Agreement”) is made and entered into as of this ____ day of _____, 2010 by _____, a _____ (“Pharmacy”) and the State of Oregon, acting by and through its Department of Human Services (“Agency”).

WHEREAS, Agency administers the Medicaid program in the State of Oregon, and Pharmacy is enrolled as a participating provider in Agency’s Medicaid program;

WHEREAS, Agency and Myers and Stauffer, LC (“Myers and Stauffer”), have entered into Contract No. 133169 (“Contract”) wherein Myers and Stauffer collects various types of information from Pharmacy in the course of preparing various reports and summaries that it delivers to Agency pursuant to that Contract to aid Agency in its administration of the Medicaid program;

WHEREAS, the information that Myers and Stauffer collects from Pharmacy may be of a sensitive and proprietary nature (“Protected Information”), and Pharmacy has expressed a desire that the sensitive and proprietary nature of its information be maintained;

WHEREAS, Agency and Myers and Stauffer have entered into a Non-Disclosure Agreement ancillary to the Contract (“MS NDA”) that endeavors to provide certain protections for the Protected Information as between Agency and Myers and Stauffer;

WHEREAS, Agency is a unit of the State of Oregon and is subject to Oregon’s Public Records Law as codified in Chapter 192.410-192.505 of the Oregon Revised Statutes (“ORS”);

WHEREAS, except as otherwise provided in the Public Records Law, (a) ORS 192.501(2) conditionally exempts from disclosure information which has been identified as “trade secrets”; (b) ORS 192.502(2) conditionally exempts from disclosure information of a personal nature if such disclosure would constitute an unreasonable invasion of privacy; (c) 192.502(4) exempts from disclosure information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure; and (d) 192.502(9) generally exempts from disclosure records or information that is prohibited, restricted, or otherwise made confidential or privileged under Oregon law;

WHEREAS, Agency and Pharmacy are both covered entities under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), which requires that covered entities take steps to protect Personal Health Information (“PHI”) as that term is defined in HIPAA;

WHEREAS, Agency and Pharmacy intend to protect PHI, the Protected Information may include PHI, and such PHI is being requested for health care operations within the meaning of HIPAA; and

WHEREAS, although Agency will not gain access to Protected Information in the normal course of performance under the Contract, Agency nevertheless could come into contact with or in possession of Protected Information in the exercise of its rights under the Contract, including its audit rights, and so the parties wish to enter into an agreement to limit disclosure of any of Pharmacy's Protected Information of which Agency may come into possession consistent with the Public Records Law;

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement, the parties agree as follows:

1. Purpose, Scope and Definition. This Agreement is intended to afford Pharmacy protection for its Protected Information, to the extent permitted by law, when Agency exercises its audit rights under Paragraph 14 of the Contract, and any other times when Agency may otherwise come into contact with or possession of Protected Information. Pursuant to the MS NDA, Myers and Stauffer is obligated to mark the Protected Information as "confidential" or "protected" prior to giving Agency access to the Protected Information. Agency only will hold information confidential pursuant to Paragraph 2, below, that has been so marked, and is not in breach of this Agreement if it discloses to third parties information not so marked. Pharmacy is responsible to work with Myers and Stauffer to ensure that its Protected Information is appropriately marked.
2. Non-Disclosure. Subject to Paragraph 3, below, and in accordance with the Public Records Law, ORS 192.410-192.505, and the Oregon Trade Secrets Act, ORS 646.461 to 646.475, Agency shall keep the Protected Information in strict confidence and shall not disclose such information or otherwise make it available, in any form or manner, to any other person or entity other than its employees, consultants and attorneys unless required to do so by law. Agency will inform each of its consultants and attorneys who will have access to the Protected Information of this Agreement and its provisions, and ensure that the consultants and attorneys agree to abide by all of its terms. Agency shall store the Protected Information under lock and key so that access to the Protected Information is limited only to those employees, consultants and attorneys who have a legitimate reason to access the Protected Information. Agency and its employees, consultants or attorneys may make copies or notes of the Protected Information, but such copies and notes are subject to the terms and conditions of this Agreement. To the extent Agency uses any Protected Information in a regulatory or adjudicatory process, Agency shall take appropriate steps to subject such disclosure to an appropriate protective order, and shall ensure that the Protected Information is identified as "Protected Materials" and marked on each page and on computer-readable storage media with the following label: "Contains Privileged and Confidential Information – Do Not Release."

3. Exceptions to Non-Disclosure. Notwithstanding Paragraph 2 above, Agency is not in breach of this Agreement if any Protected Information is disclosed to a third party when the disclosed Protected Information:

(a) is in the public domain at the time of such disclosure or is subsequently made available to the public consistent with the terms of this Agreement; or

(b) had been received by Agency at the time of such disclosure through other means without restriction on its use, or had been independently developed by Agency as shown through documentation; or

(c) is subsequently disclosed to Agency by a third party without restriction on use and without breach of any agreement or legal duty; or

(d) is otherwise no longer legally eligible for protection under either the Oregon Trade Secrets Act or the Oregon Public Records Law; or

(e) subject to the provisions of Paragraph 4, below, is used or disclosed pursuant to statutory duty or an order, subpoena or other lawful process issued by a court or other governmental authority of competent jurisdiction.

4. Notice of Pending Third Party Disclosure. In the event that a court or other governmental authority of competent jurisdiction, including the Oregon Department of Justice pursuant to ORS 192.450, issues an order, subpoena or other lawful process requiring the disclosure of Protected Information, Agency shall notify Myers and Stauffer. Pursuant to the MS NDA, Myers and Stauffer is obligated to Agency to notify Pharmacy of the potential disclosure of its Protected Information. Agency is not in violation of this Agreement if it complies with an order of such court or governmental authority to disclose the Protected Information, provided Agency notifies Myers and Stauffer such that Myers and Stauffer or Pharmacy has reasonable opportunity to seek to maintain the confidentiality of such information, or Myers and Stauffer or Pharmacy has notified Agency in writing that it will take no action to maintain such confidentiality. Agency is only obligated to notify Myers and Stauffer pursuant to this Paragraph 4, and not Pharmacy.

5. Term. This Agreement remains in effect until the date upon which the Contract expires (presently September 30, 2013, unless extended or terminated earlier). Termination does not extinguish any claim, liability or cause of action under this Agreement existing at the time of termination. Agency's obligations to hold Protected Information confidential pursuant to this Agreement continue until all Protected Information is finally disposed of in accordance with Paragraph 6, below.

6. Return or Destruction of Documents. Upon termination of this Agreement and if permitted by the Oregon State Archivist, Agency shall destroy all Protected Information in the possession or control of Agency, including its employees, consultants and attorneys

or, if destruction is not feasible or permitted under Oregon law, archive the Protected Information with the Oregon State Archivist in a privileged and confidential manner pursuant to ORS 357.805 et seq. and regulations adopted pursuant to ORS 357.895. The parties intend that Protected Information received and archived under this Agreement be subject to ORS 357.875 and be maintained as privileged and confidential by the Oregon State Archivist.

7. Notices. All notices, requests, demands, and other communications required or permitted under this Agreement must be in writing.

8. Complete Agreement; No Other Rights.

(a) This Agreement contains the complete and exclusive agreement of the parties with respect to the subject matter thereof, and supersedes all discussions, negotiations, representations, warranties, commitments, offers, contracts, and writings prior to the date of this Agreement, with respect to its subject matter. No change to this Agreement is effective unless agreed to in writing by both parties. Any conflict between the language of this Agreement and any mark, stamp, annotation or other language identifying something received hereunder must be resolved in favor of this Agreement.

(b) This Agreement is not intended to create any right in or obligation of the either party, or any third party other than those expressly stated herein.

9. Governing Law. This Agreement is made in the State of Oregon and is governed by and to be interpreted in accordance with its laws.

10. Assignment. This Agreement is binding upon the parties, their successors, and their assigns.

11. Signature Authority. Each person signing below warrants that he or she has been duly authorized to execute this Agreement on behalf of the named party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

AGENCY:

PHARMACY:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____