

**SCVHHS DEPARTMENTS
BUSINESS ASSOCIATE AGREEMENT**

WHEREAS, the Santa Clara County Health and Hospital System (SCVHHS) is a comprehensive safety-net health care system owned and operated by the County of Santa Clara (“County”); and

WHEREAS, the County is a hybrid entity pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) performing both covered and non-covered functions; and

WHEREAS, the SCVHHS is comprised of multiple County Departments, including Valley Medical Center and Clinics (VMC), the County Mental Health Department (MHD), the County Department of Alcohol and Drug Services (DADS), the County Public Health Department (PHD) and the County Custody Health Services (Custody Health) and County Valley Health Plan (“VHP”), all of which are “Covered Entities” under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”); and

WHEREAS VMC, MHD, DADS, PHD and Custody Health (collectively “Business Associates” and “SCVHHS Departments”) wish to disclose certain Protected Health Information (“PHI”) to one another pursuant to the terms of this Business Associate Agreement (“BAA”); and

WHEREAS, Business Associates are “qualified service organizations” or “QSO” within the meaning of the federal law governing Confidentiality of Alcohol and Drug Abuse Patient Records and its implementing regulations, 42 Code of Federal Regulations (“C.F.R.”) Part 2; and

WHEREAS, Business Associates intend to protect the privacy and provide for the security of PHI disclosed to other Business Associates pursuant to this BAA in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”), California Welfare & Institutions Code 5328, 42 U.S.C. Section 290dd-2, 42 CFR part 2, and other applicable laws; and

WHEREAS, as part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entities to enter into a contract containing specific requirements with any Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this BAA.

NOW, THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to the BAA, the Business Associates agree as follows:

I. Definitions

Terms used, but not otherwise defined, and terms with initial capital letters in the BAA have the same meaning as defined under the Health Insurance Portability and Accountability Act of 1996, 42 USC §§ 1320d et seq. (“HIPAA”) and the implementing regulations and with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH

Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws.

Privacy Breach Any acquisition, access, use or disclosure of Protected Health Information in a manner not permitted or allowed under state or federal privacy laws.

Business Associate is a person, organization, or agency other than a workforce member that provides specific functions, activities, or services that involve the use, creation, or disclosure of PHI for, or on behalf of, a HIPAA covered health care component. Examples of business associate functions are activities such as claims processing or administration, data analysis, utilization review, quality assurance, billing, benefit management, practice management, and repricing; and legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services.

Covered Entity shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

Designated Record Set shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

Electronic Protected Health Information means Protected Health Information that is maintained in or transmitted by electronic media.

Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

Health Care Operations shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

Privacy Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

Protected Health Information or PHI means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.103. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103].

Protected Information shall mean PHI provided by Covered Entity to Business Associates or created or received by Business Associates on Covered Entity’s behalf.

Security Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

Unsecured PHI shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

II. Duties & Responsibilities of Business Associates

- a. Permitted Uses.** Business Associates shall not use Protected Information except for the following purposes: (1) provision of integrated care and coordinating mutual referrals and services for patients of SCVHHS Departments, (2) administrative oversight, billing, and compliance-related activities, (3) analysis and evaluation of services provided by SCVHHS Departments, and (4) and entering data into and maintaining an integrated SCVHHS electronic health record.

Further, Business Associates shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule, Welfare & Institutions Code section 5328, 42 C.F.R. Part 2, or the HITECH Act, if so used by Covered Entity. Privacy Rule or the HITECH Act if so used by any Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of Covered Entity [45 C.F.R. Sections 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].

- b. Permitted Disclosures.** Business Associates shall not disclose Protected Information except for the purpose of performing Business Associates' obligations under the Agreement and as permitted under the Agreement and the BAA. Business Associates shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule, 42 C.F.R., Welfare & Institutions Code section 5328, or the HITECH Act if so disclosed by Covered Entity. However, Business Associates may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity. If Business Associates disclose Protected Information obtained pursuant to this Agreement to a third party, Business Associates must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the Protected Information within 10 calendar days of discovery, to the extent it has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

- c. Prohibited Uses and Disclosures.** Business Associates shall not use or disclose Protected Information for fundraising or marketing purposes. Business Associates shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a)]. Business Associates shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2), 42 C.F.R., and Welfare & Institutions Code

section 5328, as applicable; however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement.

- d. Appropriate Safeguards.** Business Associates shall implement appropriate administrative, technological and physical safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement and the BAA that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. Section 164.504(e) (2) (ii) (B); 45 C.F.R. Section 164.308(b)], 42 C.F.R. part 2 and Welfare & Institutions Code section 5328. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931].
- e. Reporting of Improper Access, Use or Disclosure.** Business Associates shall report to SCVHHS Compliance & Privacy Officer in writing any access, use or disclosure of Protected Information not permitted by the Agreement and BAA, and any Breach of Unsecured PHI of which it becomes aware within one business day. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e) (2) (ii) (C); 45 C.F.R. Section 164.308(b)].
- f. Business Associates' Agents.** Business Associates shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI and implement the safeguards required by paragraph c above with respect to Electronic PHI [45 C.F.R. Section 164.504(e) (2) (ii) (D); 45 C.F.R. Section 164.308(b)]. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e) (1)).
- g. Access to Protected Information.** Business Associates shall make Protected Information maintained by Business Associates or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within ten (10) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e) (2) (ii) (E)], 42 C.F.R. part 2 and Welfare & Institutions Code section 5328. If Business Associates maintain an Electronic Health Record, Business Associates shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
- h. Electronic PHI.** If Business Associates receives, creates, transmits or maintains EPHI on behalf of Covered Entity, Business Associates will, in addition, do the following:

 - (1) Develop, implement, maintain and use appropriate administrative, physical, and technical safeguards in compliance with Section 1173(d) of the Social Security Act, Title 42, Section 1320(s) or the United States Code and Title 45, Part 162 and 164 of CFR to preserve the integrity and confidentiality of all electronically maintained or transmitted PHI received from or on behalf of Covered Entity.
 - (2) Document and keep these security measures current and available for inspection by Covered Entity.

- (3) Ensure that any agent, including a subcontractor, to whom the Business Associate provides EPHI, agrees to implement reasonable and appropriate safeguards to protect it.
- (4) Report to the Covered Entity any Security Incident of which it becomes aware. For the purposes of this BAA and the Agreement, Security Incident means, as set forth in 45 C.F.R section 164.304, "the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system."

- i. Amendment of PHI.** Within ten (10) days of receipt of a request from Covered Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Business Associates or their agents or subcontractors shall make such Protected Information available to the County for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule. If any individual requests an amendment of Protected Information directly from Business Associates or their agents or subcontractors, Business Associates must notify Covered Entity in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of Covered Entity.
- j. Accounting Rights.** Promptly upon any disclosure of Protected Information for which Covered Entity is required to account to an individual, Business Associates and their agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, and the HITECH Act, as determined by Covered Entity. Business Associates agree to implement a process that allows for an accounting to be collected and maintained by Business Associates and their agents or subcontractors for at least six (6) years prior to the request. Accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for three (3) years prior to the request, and only to the extent Business Associate maintains an electronic health record and is subject to this requirement.

At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Business Associates or their agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing. It shall be each Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associates shall not disclose any Protected Information except as set forth in the Agreement, including this BAA.

- k. Governmental Access to Records.** Business Associates shall make their internal practices, books and records relating to the use and disclosure of Protected Information available to Covered Entities and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Business Associates' compliance with the Privacy Rule.

- l. Minimum Necessary.** Business Associates (and their agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure. Business Associate understands and agrees that the definition of “minimum necessary” is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes “minimum necessary.”
- m.** Business Associates acknowledge that in receiving, transmitting, transporting, storing, processing or otherwise dealing with patient records and information in connection with providing drug testing services to patients covered by the County under this Agreement and BAA, it is fully bound by the regulations governing confidentiality of alcohol and drug abuse patient records, 42 C.F.R. section 2.1, et seq., and HIPAA, and may not use or disclose the information except as permitted or required by this Agreement or applicable law.
- n.** Business Associates agree to resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Records, 42 C.F.R. Part 2.

III. Termination

- a. Material Breach.** A breach by Business Associate of any provision of this BAA shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement, any provision in the Agreement to the contrary notwithstanding [45 C.F.R. Section 164.504(e)(2)(iii)].
- b. Judicial or Administrative Proceedings.** County may terminate the Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, 42 C.F.R. Part 2, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, 42 C.F.R. Part 2, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- c. Effect of Termination.** Upon termination of the Agreement for any reason, Business Associates shall, at the option of County, return or destroy all Protected Information that Business Associates or their agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, Business Associates shall continue to extend the protections of Section 2 of the BAA to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e) (ii) (2)(I)]. If County elects destruction of the PHI, Business Associates shall certify in writing to County that such PHI has been destroyed.

IV. General Provisions

- a. Amendment to Comply with Law.** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement and/or BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the

standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI.

Upon the request of any party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to the BAA embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws.

- b. No Third-Party Beneficiaries.** Nothing express or implied in the Agreement or BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entities, Business Associates and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- c. Effect on Agreement.** Except as specifically required to implement the purposes of the BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in force and effect.
- d. Interpretation.** The BAA shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.
- e. Survivorship.** The respective rights and responsibilities of Business Associates related to the handling of PHI survive termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this BAA as of the date below.

County of Santa Clara
Santa Clara Valley Health and Hospital System

By: 
Rene Santiago, Deputy County Executive

Date: 2-8-13

County of Santa Clara
Santa Clara Valley Medical Center

By: 
Paul Lorenz, Chief Executive Officer

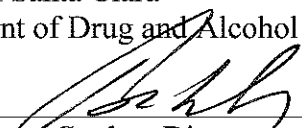
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County of Santa Clara
Mental Health Department

By: 
Nancy Pena, Director

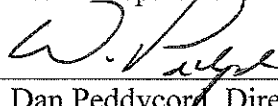
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County of Santa Clara
Department of Drug and Alcohol Services

By: 
Bruce Copley, Director

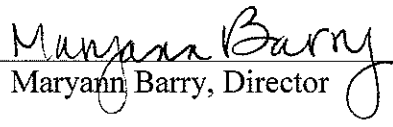
Date: 2-8-13

County of Santa Clara
Public Health Department

By: 
Dan Peddycord, Director

Date: 2/8/13

County of Santa Clara
Custody Health Services

By: 
Maryann Barry, Director

Date: 2/6/13

County of Santa Clara
Valley Health Plan

By: 
Patricia Cox, Director

Date: 2/8/13