

MONTANA COMPREHENSIVE HEALTH ASSOCIATION BUSINESS ASSOCIATE AGREEMENT

Montana Comprehensive Health Association (“MCHA”) and _____ (“Business Associate”) hereby enter into this Business Associate Agreement (“Agreement”) for purposes of compliance with federal law, as set forth below. This Agreement is effective when fully executed by the parties.

Recitals

MCHA (or MCHA’s lead carrier on behalf of MCHA) may provide Business Associate with certain information or Business Associate may collect certain information on behalf of MCHA that may include Protected Health Information (“PHI”) so that Business Associate may perform its responsibilities with and on behalf of MCHA.

MCHA and Business Associate intend to protect the privacy of PHI and provide for the security of any electronic PHI received from MCHA (or MCHA’s lead carrier on behalf of MCHA), or created or received by Business Associate on behalf of MCHA, in compliance with the Administrative Simplification portion of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); in compliance with regulations promulgated pursuant to HIPAA at 45 CFR Parts 160 and 164; and in compliance with applicable provisions of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”) and any applicable regulations and/or guidance issued by the U.S. Department of Health and Human Services (“DHHS”) with respect to the HITECH Act.

Federal regulations promulgated pursuant to HIPAA, at 45 CFR § 164.314, 45 CFR § 164.502(e) and 45 CFR § 164.504(e) require MCHA, as a Covered Entity under HIPAA, to enter into written agreements with all Business Associates.

Therefore, MCHA and Business Associate agree as follows:

1. Definitions

For purposes of this Agreement, the following definitions apply:

- a) Breach. “Breach” has the same meaning as provided in section 13400 of the HITECH Act and any implementing guidance and/or regulations, except that for purposes of this Agreement, a Breach shall include a non-permitted acquisition, access, use, or disclosure of protected health information without regard to any assessment or determination by the Business Associate as to whether such non-permitted acquisition, access, use, or disclosure poses a significant risk of financial, reputational, or other harm to the individual.

- b) Business Associate. “Business Associate” means _____ and includes all employees, subcontractors, and agents of Business Associate.
- c) Covered Entity. “Covered Entity” means the Montana Comprehensive Health Association or MCHA.
- d) Designated Record Set. “Designated Record Set” has the same meaning provided in 45 CFR §164.501.
- e) Electronic Protected Health Information. “Electronic Protected Health Information (PHI)” has the same meaning provided in 45 CFR §160.103, limited to the electronic information created, maintained or received by Business Associate from or on behalf of MCHA.
- f) Individual. “Individual” has the meaning provided in 45 CFR §160.103 and includes a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- g) Limited Data Set. “Limited Data Set” has the same meaning provided in 45 CFR §164.514(e)(2).
- h) Privacy Rule. “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, Subparts A and E.
- i) Protected Health Information. “Protected Health Information” or “PHI” has the meaning provided in 45 CFR §164.103 limited to the information created, maintained or received by Business Associate from or on behalf of MCHA.
- j) Required By Law. “Required By Law” has the same meaning provided in 45 CFR §164.103 and as defined by any applicable Montana law or regulation that is not preempted by HIPAA.
- k) Secretary. “Secretary” means the Secretary of the Department of Health and Human Services or the Secretary’s designee.
- l) Security Incident. “Security Incident” has the meaning provided in 45 CFR §164.304.
- m) Security Rule. “Security Rule” means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C.
- n) Unsecured Protected Health Information. “Unsecured Protected Health Information” has the same meaning provided in section 13401 of the HITECH Act and any implementing guidance and/or regulations.

2. Role of Business Associate in Marketing and Selling of MCHA Plans; Producer License Required

- a) Business Associate may engage in the selling or marketing of MCHA plans as provided in Mont. Code Ann. §33-22-1515(3), subject to applicable disability insurance producer licensing requirements. Business Associate may take from applicants and submit to MCHA applications for MCHA plans, and may communicate with the MCHA lead carrier and an applicant regarding the submission, status, processing, acceptance or rejection of an MCHA plan application submitted by Business Associate and any related referral fee.
- b) Business Associate must maintain a current disability insurance producer license as required by Montana law at all times when marketing, selling or otherwise acting with respect to an MCHA plan. For marketing and selling an MCHA plan, Business Associate shall be entitled to the referral fee provided for in Mont. Code Ann. §33-22-1515(3), in the amount established by MCHA and in effect at the time an applicant is accepted for MCHA plan coverage.

3. Obligations and Activities of Business Associate

Business Associate acknowledges and agrees that it is obligated by law (or upon the effective date of any portion thereof shall be obligated) to meet the applicable provisions of the HITECH Act, and such provisions are incorporated herein and made a part of this Agreement. MCHA and Business Associate agree that any regulations and/or guidance issued by DHHS with respect to the HITECH Act that relate to the obligations of business associates shall be deemed incorporated into and made a part of this Agreement.

Business Associate agrees not to use or disclose PHI other than as permitted or required by this Agreement or as Required By Law.

- a) Business Associate agrees to develop, implement, maintain and use appropriate administrative, technical, and physical safeguards that reasonably prevent the use or disclosure of PHI other than as provided for by this Agreement. Business Associate agrees to develop, implement, maintain, and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI. Business Associate shall also develop and implement policies and procedures and meet the Security Rule documentation requirements as and at such time as may be required by the HITECH Act.
- b) 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 Agreement.
- c) Business Associate will ensure that any agent, including a vendor or subcontractor, to whom Business Associate provides PHI agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such

- information. Business Associate will ensure that any agent, including a vendor or subcontractor, to whom it provides PHI agrees to implement reasonable and appropriate safeguards to ensure the confidentiality, integrity, and availability of the PHI. Business Associate agrees to notify MCHA in writing within ten business days of shipping, transferring or otherwise transmitting Protected Health Information in any form or by any means to any agent, subcontractor, vendor, sub-business associate, or other person, entity or organization performing services for or on behalf of Business Associate that is located outside the United States or any territory under the jurisdiction of the United States government.
- d) At the request of MCHA, Business Associate will provide MCHA, or as directed by MCHA, an Individual, access to PHI maintained in a Designated Record Set in a time and manner that is sufficient to meet the requirements of 45 CFR §164.524, and, where required by the HITECH Act, shall make such information available in an electronic format where directed by MCHA.
 - e) At the request of MCHA (or if so directed by MCHA, at the written request of an Individual), Business Associate agrees to make any amendment to PHI in a Designated Record Set in a time and manner that is sufficient to meet the requirements of 45 CFR §164.526.
 - f) Business Associate agrees to make its internal practices, books, and records, including policies and procedures, and any PHI, relating to the use and disclosure of PHI, available to MCHA or to the Secretary (including the Secretary's designee) for purposes of determining compliance with applicable law. Business Associate will provide such access in a time and manner that is sufficient to meet any applicable requirements of applicable law.
 - g) Business Associate agrees to document and maintain accounting record of disclosures of PHI and information related to such disclosures in a manner that is sufficient for MCHA or Business Associate to respond to a request by MCHA or an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528. Such documentation and record are referred to in this Agreement as an "Accounting." Business Associate further shall provide any additional information where required by the HITECH Act and any implementing regulations. Unless otherwise provided under the HITECH Act, Business Associate will maintain the Accounting with respect to each disclosure for at least 6 years following the date of the disclosure.
 - h) Business Associate agrees to provide to MCHA, upon request, or, as directed by MCHA, to an Individual, an accounting of disclosures in a time and manner that is sufficient to meet the requirements of 45 CFR §164.528. In addition, where Business Associate is contacted directly by an Individual based upon information provided to the Individual by BCBSMT and where so required by the HITECH Act and/or any implementing regulations, Business Associate shall make such Accounting available directly to the Individual.

- i) When using or disclosing PHI or when requesting PHI from or on behalf of MCHA, Business Associate shall, where required by the HITECH Act, utilize a Limited Data Set, if practicable. Otherwise, Business Associate agrees to make reasonable efforts to limit the PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with 45 CFR § 164.502.
- j) Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual, except as permitted by any applicable provisions of HIPAA, the HITECH Act and by written agreement with MCHA.
- k) Business Associate agrees to promptly report to MCHA any use or disclosure of PHI that is not permitted by this Agreement of which the Business Associate becomes aware. Business Associate agrees to promptly report to MCHA any Security Incident of which Business Associate becomes aware.
- l) In addition to the requirements of subsection (k), Business Associate will report to MCHA, following discovery and without unreasonable delay, but in no event later than 5 business days following discovery, any Breach of Unsecured Protected Health Information. Business Associate shall cooperate with MCHA in investigating the Breach and in meeting MCHA's obligations under the HITECH Act and any other applicable security breach notification laws, including but not limited to providing MCHA with such information in addition to Business Associate's report as MCHA may reasonably request, e.g., for purposes of MCHA making a risk assessment to determine if there is a significant risk of harm to the individual as a result of the Breach.
 - (i) For purposes of this subsection (l), discovery of a Breach by Business Associate shall be deemed to have occurred as of the first day on which such Breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Business Associate shall be deemed to have knowledge of a Breach if the Breach is known, or, by exercising reasonable diligence would have been known to, any person, other than the person committing the Breach, who is an employee, officer, or other agent of Business Associate.
 - (ii) Business Associate's report under this subsection (l) shall, to the extent available at the time the initial report is required or as promptly thereafter as such information becomes available, include:
 - a. The identification (if known) of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach;
 - b. A description of the nature of the unauthorized acquisition, access, use, or disclosure, including the date of the Breach and the date of discovery of the Breach;

- c. A description of the type of Unsecured PHI acquired, accessed, used or disclosed in the Breach (e.g., full name, social security number, date of birth, etc.);
 - d. The identity of the individual(s) who made and who received the unauthorized acquisition, access, use, or disclosure;
 - e. A description of what the Business Associate is doing to investigate the Breach, to mitigate losses, and to protect against any further breaches; and
 - f. Contact information for Business Associate's representatives knowledgeable about the Breach.
- (iii) Business Associate shall maintain (for a period of 6 years after such determination) documentation to demonstrate the basis for any determination by the Business Associate that a non-permitted acquisition, access, use, or disclosure of protected health information is not a Breach because:
- a. as provided in 45 CFR §164.402(1)(ii), the affected Protected Health Information consisted only of a limited data set that does not include zip codes or dates of birth;
 - b. as provided in 45 CFR §164.402(2)(i), the acquisition, access, or use was made unintentionally, in good faith, and within the scope of the person's authority by a workforce member or person acting under authority of Business Associate, and did not result in further use or disclosure in a manner not permitted by the Privacy Rule;
 - c. as provided in 45 CFR §164.402(2)(ii), the disclosure was made inadvertently by a person authorized to access Protected Health Information at the same Business Associate and the information disclosed was not further used or disclosed in a manner not permitted by the Privacy Rule; or
 - d. as provided in 45 CFR §164.402(2)(iii), the Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

4. Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI, consistent with the Privacy Rule and the HITECH Act, as follows:

- a) Business Associate may use or disclose PHI or as necessary, perform functions, activities, or services to or on behalf of MCHA under any service agreement(s) with MCHA if Business Associate's use or disclosure of PHI would not violate the Privacy Rule or HITECH Act if done by MCHA.
- b) Business Associate may use PHI for the proper management and administration of Business or to carry out the legal responsibilities of the Business Associate.

- c) Business Associate may disclose PHI for the proper management and administration of Business Associate if:
 - (i) Disclosure is Required By Law; or
 - (ii) Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will remain confidential and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed, and the person agrees to promptly notify the Business Associate of any known breaches of the PHI's confidentiality.
- d) Business Associate may use PHI to provide data aggregation services to MCHA as permitted by 45 CFR §164.504(e)(2)(i)(B).
- e) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities consistent with 45 CFR §164.502(j)(1).

5. Obligations of Montana Comprehensive Health Association

- a) MCHA will notify Business Associate of any limitations on uses or disclosures described in its notice of privacy practices (NOPP) in accordance with 45 CFR §164.520(b)(2) or required by the HITECH Act, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b) MCHA will notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes or revocation affects Business Associate's use or disclosure of PHI.
- c) MCHA will notify Business Associate of any restriction of the use or disclosure of PHI that MCHA has agreed to in accordance with 45 CFR §164.522 or that applies pursuant to the HITECH Act, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- d) MCHA will notify Business Associate of any alternative means or locations for receipt of confidential communications by an Individual which must be accommodated or permitted by MCHA pursuant to 45 CFR §164.522, to the extent that such alternative means or locations may affect Business Associate's use or disclosure of PHI.
- e) Except as otherwise provided in this Agreement, MCHA will not ask Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or the HITECH Act if done by MCHA.

6. Term, Termination, and Breach

- a) This Agreement is effective when fully executed by the parties and will terminate when all of the PHI provided by MCHA to Business Associate, or created or received by Business Associate on behalf of MCHA, is destroyed or returned to MCHA, or, if it is infeasible to return or destroy all PHI, protections are extended to such information in accordance with Sections 5(d) and 5(e) below.
- b) Upon MCHA's determination that Business Associate has committed a violation or material breach of this Agreement, MCHA may take any one of the following steps:
 - (i) Provide an opportunity for Business Associate to cure the breach or end the violation, and if Business Associate does not cure the breach or end the violation within a reasonable time specified by MCHA, terminate this Agreement;
 - (ii) Immediately terminate this Agreement if Business Associate has committed a material breach of this Agreement and cure of the material breach is not possible; or
 - (iii) If neither termination nor cure is feasible, elect to continue this Agreement and report the violation or material breach to the Secretary.
- c) Effective on or after February 17, 2010, upon Business Associate's determination that MCHA has committed a violation or material breach of this Agreement, Business Associate may take any one or more of the following steps:
 - (i) Provide an opportunity for MCHA to cure the breach or end the violation, and if MCHA does not cure the breach or end the violation within the reasonable time specified, terminate this Agreement;
 - (ii) Immediately terminate this Agreement if MCHA has committed a material breach of this Agreement and cure of the material breach is not possible; or,
 - (iii) If neither termination nor cure is feasible, elect to continue this Agreement and report the violation or material breach to the Secretary.
- d) Except as provided in Section 5(e), upon termination of this Agreement for any reason, Business Associate will return or destroy, at the discretion of MCHA, all PHI received from MCHA or created or received by Business Associate on behalf of MCHA. This provision will also apply to PHI that is in the possession of employees, subcontractors or agents of Business Associate. Neither Business Associate nor any employee, subcontractor or agent of Business Associate will retain copies of the PHI.
- e) If Business Associate determines that returning or destroying the PHI is not feasible, Business Associate will notify MCHA of the circumstances making the return or destruction infeasible. If MCHA agrees that return or destruction is infeasible, then Business Associate will extend the protections of this Agreement to such PHI and

limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

7. Miscellaneous

- a) MCHA and Business Associate agree to take any reasonable action necessary to amend this Agreement from time to time as may be necessary for MCHA to comply with the requirements of the HITECH Act and/or HIPAA, the Privacy Rule and any other implementing regulations or guidance.
- b) Notwithstanding the expiration or termination of this Agreement or any renewal period, it is acknowledged and agreed that those rights and obligations of Business Associate which by their nature are intended to survive such expiration or termination shall survive, including but not limited to Sections 5(d) and 5(e) of this Agreement.
- c) In the event the terms of this Agreement conflict with the terms of any other agreement between MCHA and Business Associate, the terms of this Agreement shall control.
- d) Notices and requests provided for under this Agreement will be made to Business Associate at:

Name or Office

Title

Address, City, State, Zip

Notices and requests provided for under this Agreement will be made to MCHA at:

Privacy Office
Montana Comprehensive Health Association
560 N. Park Ave.
P.O. Box 4309
Helena, MT 59604

- e) MCHA has the right to inspect the records of Business Associate or to audit Business Associate to determine whether Business Associate is in compliance with the terms of this Agreement. However, this provision does not create any obligation on the part of MCHA to conduct an inspection or audit.

- f) Nothing in this Agreement provides or is intended to provide any benefit to any third party.
- g) Each party will indemnify and hold harmless the other party, its subsidiaries and affiliates and any officer, director, employee or agent from and against any claim or liability, including attorney's fees and costs, arising out of or in connection with the party's or the party's employee's, agent's, or subcontractor's violation of the terms of this Agreement, HIPAA, the HITECH Act, or the Privacy Rule or other implementing regulations or guidance.
- h) Any ambiguity in this Agreement shall be resolved to permit the parties to comply with the HITECH Act, HIPAA, and the Privacy Rule and other implementing regulations and guidance.
- i) This Agreement shall replace and supersede any prior Business Associate Agreement between the parties.
- j) Business Associate expressly acknowledges that this Agreement is an agreement between Business Associate and MCHA, and that MCHA is a nonprofit legal entity with participating membership consisting of all insurers, insurance arrangements, societies, health maintenance organizations, and health service corporations licensed or authorized to do business in the State of Montana. Business Associate acknowledges that it has not entered into this Agreement based on representations by any person, entity or organization other than MCHA and that no person, entity, or organization other than MCHA will be held accountable or liable to Business Associate for any of MCHA's obligations under this Agreement.

This paragraph will not create any additional obligations on the part of MCHA other than those obligations created under other provisions of this Agreement.

Montana Comprehensive Health
Association, Inc.
560 North Park Avenue
P.O. Box 4309
Helena, Montana 59604

Name of Business Associate

Address

City, State, ZIP

Telephone Number

Montana Producer License Number

Cecil D. Bykerk

Name

Name



Signature

Signature

Executive Director

Title

Title

Date

Date