

MEMORANDUM OF UNDERSTANDING/BUSINESS ASSOCIATE AGREEMENT
between the
Mississippi Department of Mental Health, Central Office
and

This Agreement is entered into by the Mississippi Department of Mental Health, Central Office and _____ as business associates, which includes all facilities, programs, and services operated/conducted under the auspices of the agreeing entities, hereafter referred to as AEs.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule, that is, standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.

The Mississippi Department of Mental Health, Central Office and _____ mutually agree to the following provisions:

To not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law and specific provisions of this agreement.

To use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

To mitigate, to the extent practicable, any harmful effect that is known to either AE of a use or disclosure of Protected Health Information by the other AE in violation of the requirements of this Agreement.

To report to the other AE any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

To ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by the AE on behalf of the AE agrees to the same restrictions and conditions that apply through this Agreement to AEs with respect to such information.

To provide access, at the request of AE, and in the time and manner as mutually determined by the AEs, to Protected Health Information in a Designated Record Set, to the AEs or, as directed by AEs, to an Individual in order to meet the requirements under 45 CFR § 164.524.

To make any amendment(s) to Protected Health Information in a Designated Record Set, that the AEs direct or agree to pursuant to 45 CFR § 164.526 at the request of the AEs or an Individual, and in a time and manner as mutually determined by the AEs.

To make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by an AE on behalf of, the AE available to the other AE or to the Secretary, in a time and manner mutually agreed upon by the AEs or designated by the Secretary, for purposes of the Secretary determining either AE's compliance with the Privacy Rule.

To document such disclosures of Protected Health Information and information related to such disclosures as would be required for the AEs to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

To provide to the AE or an Individual, in a time and manner mutually determined by the AEs, information collected in accordance with the specific purpose(s) in the following paragraph of this Agreement, to permit the AEs to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

Permitted Uses and Disclosures by Agreeing Entities

General Use and Disclosure Provisions

Specific Purpose(s):

Except as otherwise limited in this Agreement, AEs may use or disclose Protected Health

Information on behalf of or to provide services to, the other, or in working in their professional capacity, for the following purposes, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by AEs or the minimum necessary policies and procedures of the AEs: activities as permitted by law and/or other agreement to accomplish established functions of the AEs (such as, but not limited to, administration of programs and services, oversight, monitoring, reporting, etc.).

Specific Use and Disclosure Provisions

Except as otherwise limited in this Agreement, AEs may use Protected Health Information for the proper management and administration of the AEs or to carry out the legal responsibilities of the AEs.

Except as otherwise limited in this Agreement, AEs may disclose Protected Health Information for the proper management and administration of the AEs, provided that disclosures are Permitted/Required By Law or the AEs obtain reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Permitted/Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the AEs of any instances of which it is aware in which the confidentiality of the information has been breached.

Except as otherwise limited in this Agreement, AEs may use Protected Health Information to provide Data Aggregation services to AEs as permitted by 42 CFR § 164.504(e)(2)(i)(B).

AEs may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

Other Obligations

AEs shall notify each other of any limitation(s) in their notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation(s) may affect the other's use or disclosure of Protected Health Information.

AEs shall notify each other of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect the other's use or disclosure of Protected Health Information.

AEs shall notify each other of any restriction to the use or disclosure of Protected Health Information that either AE has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect the other's use or disclosure of Protected Health Information.

Permissible Requests

AEs shall not request the other AE to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by either AE.

Term and Termination

Term. The Term of this Agreement shall be effective as of April 14, 2003, and shall terminate when all of the Protected Health Information provided by AEs to each other, or created or received by either AE on behalf of the other, is destroyed or returned to the AE originally maintaining the information, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Agreement.

Termination for Cause. Upon either AE's knowledge of a material breach by the other AE, both AEs agree to:

Provide an opportunity for the AE responsible for the breach to cure the breach or end the violation and terminate this Agreement if the responsible AE does not cure the breach or end the violation within the time specified by the other AE; or

Immediately terminate this Agreement if either AE has breached a material term of this Agreement and cure is not possible; or

If neither termination nor cure are feasible, the AE not responsible for the breach

shall report the violation to the Secretary.

Effect of Termination.

Except as previously provided, upon termination of this Agreement, for any reason, both AEs shall return or destroy all Protected Health Information received from the other, or created or received by one AE on behalf of the other. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of the AEs. AEs shall retain no copies of the Protected Health Information they received from the other.

In the event that the AEs determine that returning or destroying the Protected Health Information is infeasible, the AEs shall provide to each other notification of the conditions that make return or destruction infeasible. If it is mutually agreed that return or destruction of Protected Health Information is infeasible, AEs shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as the AEs maintain such Protected Health Information.

Miscellaneous

Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the AEs to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

Survival. The respective rights and obligations of AEs under this Agreement shall survive the termination of this Agreement.

Interpretation. Any ambiguity in this Agreement shall be resolved to permit the AEs to

comply with the Privacy Rule.

Agreed to by:

Executive Director

MS Department of Mental Health