

leC  
MAC

Lori A. Shibinette  
Commissioner

Lori A. Weaver  
Deputy Commissioner

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF THE COMMISSIONER

129 PLEASANT STREET, CONCORD, NH 03301-3857  
603-271-9200 1-800-852-3345 Ext. 9200  
Fax: 603-271-4912 TDD Access: 1-800-735-2964 www.dhhs.nh.gov

December 3, 2021

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the Department of Health and Human Services, Office of the Commissioner, to enter into Agreements with an unspecified number of Nursing Facilities, Rehabilitation Centers, Mid-level Residential Care Facilities, and Ambulatory Surgical Centers (Providers) for the purpose of paying providers for uncompensated costs associated with accepting individuals discharged from hospitals with the goal of increasing healthcare access, and to make unencumbered payments to Providers, not to exceed a shared price limitation of \$14,460,894 across all participating providers, effective December 8, 2021, upon Governor and Council approval, through April 8, 2022. 100% Federal Funds (American Rescue Plan Act (ARPA)).

Funds are available in the following account for State Fiscal Year 2022, with the authority to adjust budget line items within the price limitation through the Budget Office, if needed and justified.

05-095-094-940010-24650000 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SERVICES, HHS: NEW HAMPSHIRE HOSPITAL, NEW HAMPSHIRE HOSPITAL, ARPA DHHS FISCAL RECOVERY FUNDS

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount
2022	102-500731	Contracts for Oper Svc	See below*	\$14,460,894
			<b>Total</b>	<b>\$14,460,894</b>

\* The following Job Numbers are assigned for certain provider types:

00FRF602PH9512A – Nursing Facilities  
00FRF602PH9512C – Rehabilitation Centers  
00FRF602PH9512D – Mid-Level Residential Care Facilities  
00FRF602PH9512B – Ambulatory Surgical Centers

**EXPLANATION**

The purpose of this request is to allow the Department to enter into the attached Agreement with an unspecified number of Providers to pay for uncompensated costs associated

with moving patients from hospital care settings to appropriate lower levels of care. Governor Sununu issued Executive Order 2021-12 to address the current hospital capacity surge and ordered the Department to "...take all lawful and appropriate actions to assist with reducing hospital capacity challenges." As of December 2, 2021, the number of individuals hospitalized is at an all-time high in New Hampshire. Combined with today's healthcare workforce challenges and increased hospitalizations, New Hampshire's healthcare system is under significant strain.

The Department is also requesting authority to make up to a maximum amount of \$14,460,894 in unencumbered payments to participating Providers. The Department is making this unique request because the number of participating Providers and the costs associated with each provider cannot be predicted. Cost will be impacted by the number of individuals moved from hospital settings to Providers and the associated uncompensated costs.

The establishment of a standard Agreement template will allow the Department to efficiently enter into agreements with participating Providers to ensure hospital capacity can be increased as quickly as possible. This action will provide monetary guarantees for Providers to take patients from hospitals, which should increase bed hospital capacity and reduce strain on hospital workforces. The Department will provide a monthly report to the Governor and Council regarding this action.

Under the Agreement, Providers will be paid the following daily rate for each individual they receive that meet the specified payment criteria.

Type of Provider	Payment Criteria	Daily Rate
Nursing Facilities	Accepts individuals prior to Medicaid financial eligibility being determined for any Medicaid pending days that are not later reimbursed by Medicaid.	\$194.43
Rehabilitation Facilities	Accepts individuals waiting for a bed at a long-term care facility, who have been accepted to a long-term care facility or setting, and a definitive transition plan to such setting with of goal of transfer within one month to the Rehabilitation Facility.	\$892.46
Mid-Level Residential Care Facilities	Accepts residents prior to Medicaid financial eligibility being determined for any Medicaid pending days that are not later reimbursed by Medicaid.	\$124.58
Ambulatory Surgical Centers	Provides services to patients for up to 3 days and which no other source of payment is available.	\$1,005.52

The population served includes residents statewide. The exact number of residents of the State of New Hampshire who will be served will depend on hospitalization rates.

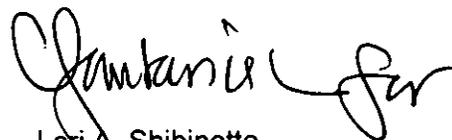
Should the Governor and Council not authorize this request the Department will be unable to reduce the strain on New Hampshire hospitals.

Area served: Statewide

Source of Federal Funds: Assistance Listing Number #21.027.

In the event that the Federal Funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lori A. Shibinette". The signature is fluid and cursive, with a large initial "L" and "S".

Lori A. Shibinette  
Commissioner



**TERMS OF PROVIDER AID AGREEMENT**

This document sets forth the terms of this Provider Aid Agreement (Agreement) entered into between the State of New Hampshire, Department of Health and Human Services (hereinafter referred to as the "DHHS" or "State"), and \_\_\_\_\_ (Provider), with a principal place of business of \_\_\_\_\_, for the provision of care and diversion from hospitals for eligible clients. This Agreement is effective December 8, 2021, upon the signature of the parties and subject to Governor and Council approval, and the Completion Date is April 8, 2022, unless terminated earlier in accordance with Section 10 below.

WHEREAS, Governor Christopher T. Sununu, Governor of the State of New Hampshire, issued Executive Order 2021-12, effective November 23, 2021, directing DHHS to work with providers and stakeholders to identify additional immediate actions and resources available under state and federal law necessary to increase healthcare capacity statewide;

WHEREAS, the Provider shall provide placement and services for individuals eligible for Nursing Facility Level of Care, but are unable to transfer to such facilities due to staffing pressures in accordance with the terms and conditions set forth below;

WHEREAS, the patient does not have insurance, or coverage for such services under their current benefits and there is no other source of payment for the service. In order for the provider to serve the patient in accordance with the terms and conditions set forth below;

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and conditions contained in the Agreement and set forth herein, the parties hereto agree to the following:

1. **Qualifying Provider:** For the purposes of this Agreement a qualifying "Provider" must possess a valid license issued by DHHS in accordance with the following regulations:

Type of Provider	New Hampshire Administrative Rule
1) Nursing Facilities	He-P 803
2) Rehabilitation Facilities	He-P 807
3) Mid-Level Residential Care Facilities	He-P 804 and He-P 805
4) Ambulatory Surgical Centers* (Unaffiliated with a Hospital)	He-P 812
* The organization cannot be paid under this Agreement if the organization is affiliated with a hospital.	

2. **Patient Transfer Procedures:** The Provider must adhere to the following patient transfer procedures to be eligible for reimbursement:

- 2.1 Provider Types 1, 2, & 3: The Provider must obtain authorization from DHHS, Bureau of Elderly and Adult Services (BEAS) prior to transferring patients by:
  - 2.1.1 Completing the COVID-19 Provider Aid Prior Authorization form located at NH Easy at [nheasy.nh.gov](http://nheasy.nh.gov), forms section.
  - 2.1.2 Completing the BEAS Form 3820 Change of Status Notification form located at NH Easy at [nheasy.nh.gov](http://nheasy.nh.gov), forms section.
  - 2.1.3 Submitting both completed forms to [beasltcprovideraide@dhhs.nh.gov](mailto:beasltcprovideraide@dhhs.nh.gov).
  - 2.1.4 Receiving approval from DHHS. Once approved, the transfer of the patient may occur.

**New Hampshire State of Health and Human Services  
Provider Aid Agreement**



**2.2 Provider Type 4:**

2.2.1 The Provider does not need prior approval for the continued services if a service has been provided at the Ambulatory Surgery Center, but medical necessity is required for continued care.

2.2.2 The Provider must obtain prior approval from DHHS before transferring patients from another facility to the Ambulatory Surgical Center by:

2.2.2.1 Completing the COVID-19 ASC Prior Authorization form at NH Easy, forms section, NH Easy.nh.gov.

2.2.2.2 Emailing the completed form to DHHS at [MedicaidProviderAide@dhhs.nh.gov](mailto:MedicaidProviderAide@dhhs.nh.gov).

2.2.2.3 Receiving approval from DHHS. Once approved, the transfer of the patient may occur.

**3. Payment:** Payment shall be made to the Provider for qualifying patients as follows:

3.1 Funding for this Agreement is a shared Price Limitation of \$14,460,894 across all eligible providers statewide from December 8, 2021 through April 8, 2022.

3.2 DHHS shall pay the Provider costs associated with patients meeting the following criteria and approved in accordance with section 2, at the rates stipulated below:

Type of Provider	Payment Criteria	Daily Rate
1) Nursing Facilities	Accepts individuals prior to Medicaid financial eligibility being determined for any Medicaid pending days that are not later reimbursed by Medicaid.	\$194.43
2) Rehabilitation Facilities	Accepts individuals waiting for a bed at a long-term care facility, who have been accepted to a long-term care facility or setting, and a definitive transition plan to such setting with the goal of transfer within one month to the Rehabilitation Facility.	\$892.46
3) Mid-Level Residential Care Facilities	Accepts residents prior to Medicaid financial eligibility being determined for any Medicaid pending days that are not later reimbursed by Medicaid.	\$124.58
4) Ambulatory Surgical Centers	Provides services to patients for up to 3 days and which no other source of payment is available.	\$1,005.52

3.3 The Provider shall submit an invoice with supporting documentation to DHHS, no later than the 15<sup>th</sup> working day of the month following the month in which services were provided. The Provider shall ensure each invoice:

3.3.1 Includes the Provider's Vendor Number issued upon registering with the New Hampshire Department of Administrative Services.

3.3.2 Is submitted in a form acceptable to DHHS.

3.3.3 Identifies and requests payment for costs allowable under this Agreement.

3.3.4 Includes supporting documentation of allowable costs for each invoice that includes the following information for each patient:

3.3.4.1 Prior Authorization number (Provider Types 1, 2, and 3 only).

3.3.4.2 Admission date.

3.3.4.3 Discharge date.

**New Hampshire State of Health and Human Services  
Provider Aid Agreement**



3.3.4.4 Description of the medical reason and necessity for the services (Provider Type 4 only).

- 3.4 The Provider shall upload all invoices via a secure file transfer protocol (SFTP) site administered by DHHS. Upon signature of the parties, DHHS shall provide detailed invoicing instructions to the Provider.
- 3.5 If the Provider is submitting a bill for days not covered by Medicaid, documentation supporting the billing period in question shall be attached to invoices by the Provider.
- 3.6 Upon request of DHHS, the Provider shall furnish additional documentation as necessary to support the days and level of care being invoiced for under this agreement.
- 3.7 DHHS shall make payment to the Provider within thirty (30) days of receipt of each invoice, subsequent to approval of the submitted invoice and if sufficient funds are available, subject to Paragraph 5 Conditional Nature of Agreement.
- 3.8 For invoices related to Medicaid pending days, the Provider shall not bill DHHS until Medicaid Eligibility has been determined and billing for the pending days has occurred.
- 3.9 The Provider shall retain all supporting documentation of expenses incurred for up to five (5) years from the Agreement period.
- 3.10 Final invoices shall be submitted to DHHS no later than six (6) months after the Completion Date of this Agreement.

**4. CONFIDENTIALITY**

- 4.1 Any and all confidential information obtained or received by the Provider shall be kept confidential and shall not be disclosed to anyone for any reason, unless required by law. "Confidential Information" means all information owned, managed, created, or received from the Individuals served under this Agreement, the DHHS, any other agency of the State, or any medical provider, that is protected by Federal or State information security, privacy or confidentiality laws or rules. Confidential Information includes, but is not limited to, Derivative Data, protected health information (PHI), personally identifiable information (PII), federal tax information (FTI), Social Security Administration information (SSA) and criminal justice information services (CJIS) and any other sensitive confidential information provided under the Agreement. This covenant shall survive the termination of the Agreement.
- 4.2 The Provider shall use and disclose Protected Health Information in compliance with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 CFR Parts 160, 161, and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, and in accordance with the attached Exhibit A, Business Associate Agreement, which has been executed by the parties.

**5. IMPACTS RESULTING FROM COURT ORDERS OR LEGISLATIVE CHANGES**

- 5.1 The Provider agrees that, to the extent future state or federal legislation or court orders may have an impact on the Services described herein, DHHS has the right to modify Service priorities and expenditure requirements under this Agreement so as to achieve compliance therewith

**6. CONDITIONAL NATURE OF AGREEMENT**

- 6.1 The Provider acknowledges that no funds will be paid to the Provider once the price limitation is reached.
- 6.2 Notwithstanding any provision of this Agreement to the contrary, all obligations of continuance of payments, in whole or in part under this Agreement, are contingent upon the continued appropriation or availability of funds, including any subsequent changes to the appropriation or



availability, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds.

**7. PERSONNEL**

- 7.1 The Provider warrants that all personnel engaged in the Services shall be qualified to perform the Services and shall be properly licensed and otherwise authorized to do so under all applicable laws.

**8. COMPLIANCE WITH LAWS AND REGULATIONS**

- 8.1 In connection with the performance of the Services, the Provider shall comply with all statutes, laws, regulations and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Provider, including but not limited to, the Health Insurance Portability and Accountability Act, HIPAA; Pub. L. 104-191, 110 Stat. 1936 (1996), the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 161, and 164, and civil rights and equal opportunity laws.
- 8.2 During the term of this Agreement, the Provider shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
- 8.3 The Provider agrees to permit the State or United States access to any of the Provider's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**9. ASSIGNMENT/DELEGATION/SUBCONTRACTS**

- 9.1 The Provider shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State.
- 9.2 None of the Services shall be subcontracted by the Provider without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**10. RIGHT OF TERMINATION/EVENT OF DEFAULT**

- 10.1 This Agreement may be terminated by either party for any reason by providing a thirty (30) day written notice to the other party.

**11. CHOICE OF LAW AND FORUM**

- 11.1 This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire. Any actions arising out of this Agreement shall be brought and maintained in a New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

**12. PROVIDER'S RELATION TO THE STATE**

- 12.1 In the performance of this Agreement the Provider is neither an agent nor an employee of the State, provided, however, that nothing in this agreement shall limit or otherwise prohibit the State's authority to designate as an agent of the state any of the officers, employees, agents or members of the Provider pursuant to RSA 508:17-a. Neither the Provider nor any of its officers, employees, agents or members shall have authority to bind the State or, except as provided in RSA 508:17-a (if applicable) to receive any benefits, worker's compensation or other emoluments provided by the State to its employees. It is expressly agreed, pursuant to RSA 281-A:2, VII (a) (6), that the Provider shall solely be responsible for any worker's compensation benefits for any services or duties

New Hampshire State of Health and Human Services  
Provider Aid Agreement



performed by its officers, employees, agents or members provided in connection with this agreement.

**13. AMENDMENT**

13.1 This Agreement may be amended, waived, or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver, or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule, or policy.

**14. ENTIRE AGREEMENT**

14.1 This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

PROVIDER

\_\_\_\_\_  
Print Name:  
Print Title:  
Provider Name:  
Duly Authorized

\_\_\_\_\_  
Date

NH DEPARTMENT OF HEALTH AND HUMAN SERVICES

\_\_\_\_\_  
Christine Santaniello, Associate Commissioner  
NH Department of Health of Human Services

\_\_\_\_\_  
Date

The preceding Agreement, having been reviewed by this office, is approved as to form, substance, and execution.

OFFICE OF THE ATTORNEY GENERAL

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Title:



Exhibit A

**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**  
**BUSINESS ASSOCIATE AGREEMENT**

The Contractor identified in Section 1.3 of the General Provisions of the Agreement agrees to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and with the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 applicable to business associates. As defined herein, "Business Associate" shall mean the Contractor and subcontractors and agents of the Contractor that receive, use or have access to protected health information under this Agreement and "Covered Entity" shall mean the State of New Hampshire, Department of Health and Human Services.

(1) **Definitions.**

- a. "Breach" shall have the same meaning as the term "Breách" in section 164.402 of Title 45, Code of Federal Regulations.
- b. "Business Associate" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- c. "Covered Entity" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- d. "Designated Record Set" shall have the same meaning as the term "designated recordset" in 45 CFR Section 164.501.
- e. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45CFR Section 164.501.
- f. "Health Care Operations" shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.
- g. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, Title XIII, Subtitle D, Part 1 & 2 of the American Recovery and Reinvestment Act of 2009.
- h. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 162 and 164 and amendments thereto.
- i. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.501(g).
- j. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.
- k. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR Section 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.



Exhibit A

- i. "Required by Law" shall have the same meaning as the term "required by law" in 45CFR Section 164.103.
- m. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- n. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C, and amendments thereto.
- o. "Unsecured Protected Health Information" means protected health information that is not secured by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.
- p. Other Definitions - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time, and the HITECH Act.

**(2) Business Associate Use and Disclosure of Protected Health Information.**

- a. Business Associate shall not use, disclose, maintain or transmit Protected Health Information (PHI) except as reasonably necessary to provide the services outlined under Exhibit A of the Agreement. Further, Business Associate, including but not limited to all its directors, officers, employees and agents, shall not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.
- b. Business Associate may use or disclose PHI:
  - I. For the proper management and administration of the Business Associate;
  - II. As required by law, pursuant to the terms set forth in paragraph d. below; or
  - III. For data aggregation purposes for the health care operations of Covered Entity.
- c. To the extent Business Associate is permitted under the Agreement to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to notify Business Associate, in accordance with the HIPAA Privacy, Security, and Breach Notification Rules of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.
- d. The Business Associate shall not, unless such disclosure is reasonably necessary to provide services under Exhibit A of the Agreement, disclose any PHI in response to a request for disclosure on the basis that it is required by law, without first notifying Covered Entity so that Covered Entity has an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, the Business



Exhibit A

---

Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.

- e. If the Covered Entity notifies the Business Associate that Covered Entity has agreed to be bound by additional restrictions over and above those uses or disclosures or security safeguards of PHI pursuant to the Privacy and Security Rule, the Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions and shall abide by any additional security safeguards.

**(3) Obligations and Activities of Business Associate.**

- a. The Business Associate shall notify the Covered Entity's Privacy Officer immediately after the Business Associate becomes aware of any use or disclosure of protected health information not provided for by the Agreement including breaches of unsecured protected health information and/or any security incident that may have an impact on the protected health information of the Covered Entity.
- b. The Business Associate shall immediately perform a risk assessment when it becomes aware of any of the above situations. The risk assessment shall include, but not be limited to:
  - o The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
  - o The unauthorized person used the protected health information or to whom the disclosure was made;
  - o Whether the protected health information was actually acquired or viewed
  - o The extent to which the risk to the protected health information has been mitigated.

The Business Associate shall complete the risk assessment within 48 hours of the breach and immediately report the findings of the risk assessment in writing to the Covered Entity.

- c. The Business Associate shall comply with all sections of the Privacy, Security, and Breach Notification Rule.
- d. Business Associate shall make available all of its internal policies and procedures, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity to the Secretary for purposes of determining Covered Entity's compliance with HIPAA and the Privacy and Security Rule.
- e. Business Associate shall require all of its business associates that receive, use or have access to PHI under the Agreement, to agree in writing to adhere to the same restrictions and conditions on the use and disclosure of PHI contained herein, including the duty to return or destroy the PHI as provided under Section 3 (I). The Covered Entity shall be considered a direct third party beneficiary of the Contractor's business associate agreements with Contractor's intended business associates, who will be receiving PHI



Exhibit A

---

pursuant to this Agreement, with rights of enforcement and indemnification from such business associates who shall be governed by standard Paragraph #13 of the standard contract provisions (P-37) of this Agreement for the purpose of use and disclosure of protected health information.

- f. Within five (5) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.
- g. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set to the Covered Entity, or as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR Section 164.524.
- h. Within ten (10) business days of receiving a written request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR Section 164.526.
- i. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
- j. Within ten (10) business days of receiving a written request from Covered Entity for a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill its obligations to provide an accounting of disclosures with respect to PHI in accordance with 45 CFR Section 164.528.
- k. In the event any individual requests access to, amendment of, or accounting of PHI directly from the Business Associate, the Business Associate shall within two (2) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or the Business Associate to violate HIPAA and the Privacy and Security Rule, the Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.
- l. Within ten (10) business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as specified by Covered Entity, all PHI received from, or created or received by the Business Associate in connection with the Agreement, and shall not retain any copies or back-up tapes of such PHI. If return or destruction is not feasible, or the disposition of the PHI has been otherwise agreed to in the Agreement, Business Associate shall continue to extend the protections of the 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



Exhibit A

Associate maintains such PHI. If Covered Entity, in its sole discretion, requires that the Business Associate destroy any or all PHI, the Business Associate shall certify to Covered Entity that the PHI has been destroyed.

(4) **Obligations of Covered Entity**

- a. Covered Entity shall notify Business Associate of any changes or limitation(s) in its Notice of Privacy Practices provided to individuals in accordance with 45 CFR Section 164.520, to the extent that such change or limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall promptly notify Business Associate of any changes in, or revocation of permission provided to Covered Entity by individuals whose PHI may be used or disclosed by Business Associate under this Agreement, pursuant to 45 CFR Section 164.506 or 45 CFR Section 164.508.
- c. Covered entity shall promptly notify Business Associate of any restrictions on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(5) **Termination for Cause**

In addition to Paragraph 10 of the standard terms and conditions (P-37) of this Agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit I. The Covered Entity may either immediately terminate the Agreement or provide an opportunity for Business Associate to cure the alleged breach within a timeframe specified by Covered Entity. If Covered Entity determines that neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(6) **Miscellaneous**

- a. **Definitions and Regulatory References.** All terms used, but not otherwise defined herein, shall have the same meaning as those terms in the Privacy and Security Rule, amended from time to time. A reference in the Agreement, as amended to include this Exhibit I, to a Section in the Privacy and Security Rule means the Section as in effect or as amended.
- b. **Amendment.** Covered Entity and Business Associate agree to take such action as is necessary to amend the Agreement, from time to time as is necessary for Covered Entity to comply with the changes in the requirements of HIPAA, the Privacy and Security Rule, and applicable federal and state law.
- c. **Data Ownership.** The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. **Interpretation.** The parties agree that any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, the Privacy and Security Rule.



Exhibit A

- e. Segregation. If any term or condition of this Exhibit I or the application thereof to any person(s) or circumstance is held invalid, such invalidity shall not affect other terms or conditions which can be given effect without the invalid term or condition; to this end the terms and conditions of this Exhibit I are declared severable.
  
- f. Survival. Provisions in this Exhibit I regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of the Agreement in section (3) I, the defense and indemnification provisions of section (3) e and Paragraph 13 of the standard terms and conditions (P-37), shall survive the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Exhibit I.

Department of Health and Human Services

The State

Name of the Contractor

Signature of Authorized Representative

Signature of Authorized Representative

Name of Authorized Representative

Name of Authorized Representative

Title of Authorized Representative

Title of Authorized Representative

Date

Date