



Community Health Center

of St. Mary's Healthcare and Nathan Littauer Hospital

2-8 West Main Street, Johnstown, NY 12095

518.762.8215 or 800.238.8308 www.chchomecare.org

August 17, 2017

Jeffery T. Smith
Montgomery County Emergency Management Department
Public Safety Facility
200 Clark Drive
P.O. Box 338
Fultonville, NY 12072

Dear Mr. Smith,

Community Health Center (CHC) of St. Mary's Healthcare and Nathan Littauer Hospital would like to collaborate with Montgomery County Emergency Preparedness Services through a Business Associate Agreement (BAA) in the event CHC would need to share Protect Health Information (PHI) during an emergency/disaster that requires your assistance in activities such as: rescuing, evacuating, transporting our at-risk/vulnerable patients. Home Care Agencies are required to collaborate with Federal, State, and local emergency preparedness organizations in the event our community patient's safety and security is impaired.

I have included two original, signed BAA's for your review and signature. I would ask that you would return one completed packet to my attention at your earliest convenience.

Please feel free to contact me with any questions or concerns.

Best regards,

Brenda L. Maynor, MS, RN, LNC
Vice President of Clinical Operations

Not just any home care agency...Your Community Home Care Agency!

HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT is made as of the 16th day of August, 2017 and between Community Health Center of St. Mary's Healthcare and Nathan Littauer Hospital, Inc. ("CHC") and Montgomery County Emergency Management.

RECITALS:

WHEREAS, Montgomery County Emergency Management (hereinafter referred to as Subcontractor), provides services for CHC (the "Service Arrangement") pursuant to which CHC may disclose Protected Health Information ("PHI") to Subcontractor in order to enable Subcontractor to perform one or more functions for CHC related to Treatment, Payment or Health Care Operations; and

WHEREAS, the parties desire to comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Final Rule for Standards for Privacy of Individually Identifiable Health Information adopted by the United States Department of Health and Human Services and codified at 45 C.F.R. part 160 and part 164, subparts A & E (the "Privacy Rule"), the HIPAA Security Rule, codified at 45 C.F.R. Part 164 Subpart C (the "Security Rule") and Subtitle D of the Health Information Technology for Economic and Clinical Health Act ("HITECH") including 45 C.F.R. Sections 164.308, 164.310, 164.312 and 164.316.

NOW THEREFORE, the parties to this Agreement hereby agree as follows:

1. Definitions. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 160.103, 164.103, and 164.304, 164.501 and 164.502.
2. Obligations and Activities of Subcontractor.
 - a. Subcontractor agrees to not use or further disclose PHI other than as permitted or required by this Agreement, as required by Law or as permitted by law, provided such use or disclosure would also be permissible by law by CHC.
 - b. Subcontractor agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. Subcontractor agrees to implement Administrative Safeguards, Physical Safeguards and Technical Safeguards ("Safeguards") that reasonably and appropriately protect the confidentiality, integrity and availability of PHI as required by the "Security Rule", including those safeguards required pursuant to 45 C.F.R. §§ 164.308, 164.310, 164.312, 164.314 and

164.316, in the same manner that those requirements apply to CHC pursuant to 45 C.F.R. § 164.504.

- c. Subcontractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Subcontractor of a use or disclosure of PHI by Subcontractor in violation of the requirements of this Agreement.
- d. Subcontractor agrees to report to CHC any use or disclosure for the PHI not provided for by this Agreement, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware.
- e. Subcontractor agrees to ensure that any agent, including a subcontractor or vendor, to whom it provides PHI received from, or created or received by Subcontractor on behalf of CHC agrees to the same restrictions and conditions that apply through this Agreement to Subcontractor with respect to such information through a contractual arrangement that complies with 45 C.F.R. § 164.314.
- f. Subcontractor agrees to provide paper or electronic access, at the request of CHC and in the time and manner designated by CHC, to PHI in a Designated Record Set to CHC or, as directed by CHC, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524. If the Individual requests an electronic copy of the information, Subcontractor must provide CHC with the information requested in the electronic form and format requested by the Individual and/or CHC if it is readily producible in such form and format; or, if not, in a readable electronic form and format as requested by CHC.
- g. Subcontractor agrees to make any amendment(s) to PHI in a Designated Record Set that CHC directs or agrees to pursuant to 45 C.F.R. §164.526 at the request of CHC or an Individual, and in the time and manner designated by CHC. If Subcontractor receives a request for amendment to PHI directly from an Individual, Subcontractor shall notify CHC upon receipt of such request.
- h. Subcontractor agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, created or received by Subcontractor on behalf of CHC available to CHC, or at the request of CHC to the Secretary, in a time and manner designated by CHC or the Secretary, for the purposes of the Secretary determining CHC's compliance with the Privacy Rule and Security Rule.
- i. Subcontractor agrees to document such disclosures of PHI and information related to such disclosures as would be required for CHC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528.

- j. Subcontractor agrees to provide to CHC or an Individual, in a time and manner designated by CHC, information collected in accordance with this Agreement, to permit CHC to respond to a request by an individual for an accounting of disclosures for PHI in accordance with 45 §C.F.R. 164.528.
- k. If Subcontractor accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses Unsecured Protected Health Information (as defined in 45 C.F.R. § 164.402) for CHC, it shall, following the discovery of a breach of such information, promptly notify CHC of such breach. Such notice shall include: a) the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Subcontractor to have been accessed, acquired or disclosed during such breach; b) a brief description of what happened, including the date of the breach and discovery of the breach; c) a description of the type of Unsecured PHI that was involved in the breach; d) a description of the investigation into the breach, mitigation of harm to the individuals and protection against further breaches; e) the results of any and all investigation performed by Subcontractor related to the breach; and f) contact information of the most knowledgeable individual for CHC to contact relating to the breach and its investigation into the breach.
- l. Subcontractor agrees that it will not receive remuneration directly or indirectly in exchange for PHI without authorization unless an exception under 13405(d) of the HITECH Act applies.
- m. Subcontractor agrees that it will not receive remuneration for certain communications that fall within the exceptions to the definition of Marketing under 45 C.F.R. §164.501 unless permitted by the HITECH Act.
- n. If applicable, Subcontractor agrees that it will not use or disclose genetic information for underwriting purposes, as that term is defined in 45 C.F.R. § 164.502.
- o. Subcontractor hereby agrees to comply with state laws applicable to PHI and personal information of individuals' information it receives from CHC.
- p. Business Associate agrees that no PHI may be received, maintained, stored, accessed or transmitted outside of the United States of America.

3. Permitted Uses and Disclosures by Subcontractor.

- a. Except as otherwise limited to this Agreement, Subcontractor may use or disclose PHI to perform functions, activities, or services for, or on behalf of, CHC as specified in the Service Arrangement, provided that such use or disclosure would not violate the Privacy Rule if done by CHC or the

minimum necessary policies and procedures of CHC required by 45 C.F.R. §164.514(d).

- b. Except as otherwise limited in this Agreement, Subcontractor may use PHI for the proper management and administration of the Subcontractor or to carry out the legal responsibilities of the Subcontractor.
- c. Except as otherwise limited in this Agreement, Subcontractor may disclose PHI for the proper management and administration of the Subcontractor, provided that disclosures are Required By Law, or Subcontractor obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Subcontractor of any instances of which it is aware in which the confidentiality of the information has been breached.
- d. Except as otherwise limited in this Agreement, Subcontractor may use PHI to provide Data Aggregation services to CHC as permitted by 45 C.F.R. §164.504 (e)(2)(i)(B).
- e. Subcontractor may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §164.502(j)(1).

4. Obligations of CHC

- a. CHC shall notify Subcontractor of any limitation(s) in the privacy practices of CHC, and any limitation(s) in a covered entity's notice of privacy practices of which CHC is aware, in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Subcontractor's use or disclosure of PHI.
- b. CHC shall notify Subcontractor of any changes in, or revocation of, permission by an Individual to use or disclose PHI of which CHC is made aware, to the extent that such changes may affect Subcontractor's use or disclosure of PHI.
- c. CHC shall notify Subcontractor of any restriction to the use or disclosure of PHI that a covered entity has agreed to in accordance with 45 C.F.R. §164.522, to which CHC is aware, to the extent that such restriction may affect Subcontractor's use or disclosure of PHI.

5. Permissible Requests by CHC

CHC shall not request Subcontractor to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by CHC, provided that, to the extent permitted by the Service Arrangement, Subcontractor may use or

disclose PHI for Subcontractor's Data Aggregation activities or proper management and administrative activities.

6. Term and Termination.

- a. The term of this Agreement shall begin as of the effective date of the Service Arrangement and shall terminate when all of the PHI provided by CHC to Subcontractor, or created or received by Subcontractor on behalf of CHC, is destroyed or returned to CHC, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of this Section.
- b. Upon CHC's knowledge of a material breach by Subcontractor, CHC shall either:
 - i. Provide an opportunity for Subcontractor to cure the breach or end the violation and terminate this Agreement and the Service Arrangement if Subcontractor does not cure the breach or end the violation within the time specified by CHC.
 - ii. Immediately terminate this Agreement and the Service arrangement if Subcontractor has breached a material term of this Agreement and cure is not possible; or
 - iii. If neither termination nor cure is feasible, CHC shall report the violation to the Secretary.
- c. Except as provided in paragraph (d) of this Section, upon any termination or expiration of this Agreement, Subcontractor shall return or destroy all PHI received from CHC, or created or received by Subcontractor on behalf of CHC. This provision shall apply to PHI that is in the possession of subcontractors or agents of Subcontractor. Subcontractor shall retain no copies of the PHI. Subcontractor shall ensure that its subcontractors or vendors return or destroy any of CHC's PHI received from Subcontractor.
- d. In the event that Subcontractor determines that returning or destroying the PHI is infeasible, Subcontractor shall provide to CHC notification of the conditions that make return or destruction infeasible. Upon CHC's written agreement that return or destruction of PHI is infeasible, Subcontractor shall 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 Subcontractor maintains such PHI.

7. Miscellaneous.

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

- b. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for CHC to comply with the requirements of HIPAA, the Privacy and Security Rules and HITECH.
- c. The respective rights and obligations of Subcontractor under Section 6 (c) and (d) of this Agreement shall survive the termination of this Agreement.
- d. Any ambiguity in this Agreement shall be resolved to permit CHC to comply with HIPAA and HITECH.
- e. Subcontractor is solely responsible for all decisions made by Subcontractor regarding the safeguarding of PHI.
- f. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than CHC, Subcontractor and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever. It is not intended that an agency relationship (as defined under the Federal common law of agency) be established by this BAA, either expressly or by implication, between Covered Entity and Business Associate for purposes of liability under HIPAA or the HITECH Act, or the Privacy, Security, or Breach Notification Rules. No terms or conditions contained in this BAA shall be construed to make or render Business Associate an agent of Covered Entity.
- g. Modification of the terms of this Agreement shall not be effective or binding upon the parties unless and until such modification is committed to writing and executed by the parties hereto.
- h. This Agreement shall be binding upon the parties hereto, and their respective legal representatives, trustees, receivers, successors and permitted assigns.
- i. Should any provision of this Agreement be found unenforceable, it shall be deemed severable and the balance of the Agreement shall continue in full force and effect as if the unenforceable provision had never been made a part hereof.
- j. This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance.
- k. All notices and communications required or permitted to be given hereunder shall be sent by certified or regular mail, addressed to the other part as its respective address as shown on the signature page, or at such

other address as such party shall from time to time designate in writing to the other party, and shall be effective from the date of mailing.

- l. This Agreement, including such portions as are incorporated by reference herein, constitutes the entire agreement by, between and among the parties, and such parties acknowledge by their signature hereto that they do not rely upon any representations or undertakings by any person or party, past or future, not expressly set forth in writing herein.
- m. Subcontractor shall maintain or cause to be maintained sufficient insurance coverage as shall be necessary to insure Subcontractor and its employees, agents, representatives or subcontractors against any and all claims or claims for damages arising under this Business Associate Agreement and such insurance coverage shall apply to all services provided by Subcontractor or its agents or subcontractors pursuant to this Business Associate Agreement. Subcontractor shall indemnify, hold harmless and defend CHC from and against any and all claims, losses, liabilities, costs and other expenses (including but not limited to, reasonable attorneys' fees and costs, administrative penalties and fines, costs expended to notify individuals and/or to prevent or remedy possible identity theft, financial harm, reputational harm, or any other claims of harm related to a breach) incurred as a result of, or arising directly or indirectly out of or in connection with any acts or omissions of Subcontractor, its employees, agents, representatives or subcontractors, under this Business Associate Agreement, including, but not limited to, negligent or intentional acts or omissions. This provision shall survive termination of this Agreement.

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

Community Health Center 2-8 W Main Street, Johnstown, NY 12095

By: _____

Brenda L. Maynor, MS, RN, LNC

Title: Vice President of Clinical

Date: August 16, 2017

SUBCONTRACTOR

By: _____

Title: _____

Address: _____

Date: _____